IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/09/2003

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.14856 of 2003
W.P.M.P.Nos.18599, 18600 of 2003
and
W.V.M.P.Nos.1399 to 1402 of 2003

M/s.Binny Limited
rep. by N.Ganesh
General Manager
106, Armenian Street
Chennai-600 001. .. Petitioner

-Vs-

1. The Appellate Authority for Industrial
and Financial Reconstruction
10th Floor, "Jeevan Prakash"
25, Kasturbai Gandhi Marg
New Delhi-110 001.

2. The Board of Industrial and Financial
Reconstruction, Sawanar Vyapar Bhawan
1, Tolstoy Marg, New Delhi.

3. The Chairman & Managing Director
State Bank of India
Central Office
Madam Cama Road
Mumbai.

4. The Chairman & Managing Director
IDBI, IDBI Tower, Cuffe Parade
Mumbai.

5. The Chairman & Managing Director
IFCI, IFCI Tower
61, Nehru Place,
New Delhi-110 019.

6. The Chairman & Managing Director
ICICI, ICICI Tower
North Tower (East Wing)
Bandra-Kurla Complex

Mumbai-400 051.

7. The Chairman & Managing Director
Bank of Baroda, BIFR Cell
3, Walchand Hirachand Marg
Mumbai-400 038.

8. The Chairman & Managing Director
Indian Bank
31, Rajaji Salai
Chennai-600 001.

9. The Joint Secretary
Industries & Commerce Department
Government of Andhra Pradesh
Hyderabad.

10.The Joint Secretary
Commerce & Industries Department
Sachivalaya, Bangalore.

11.The Additional Secretary
Department of Industries
Government of Tamil Nadu
Chennai.

12.The Secretary,
Ministry of Textiles
Udyog Bhawan
New Delhi.

13.The Secretary
Ministry of Commerce
Udyog Bhawan
New Delhi.

14.The Secretary
Department of Banking
Ministry of Finance
Jeevan Deep, Parliament Street
New Delhi.

15.The General Manager
Oriental Bank of Commerce
14-15, Shivam House
Connaught Place
New Delhi.

16.The President
Buckingham & Carnatic Mills
Staff Union, No.60, Krishnadas Road

Chennai.

17.The President
Madras Labour Union
176, Strahans Road
Chennai.

18.The President
Binny Beach Engineering Workers Union
48, GST Road
Meenambakkam
Chennai-27.

19.The General Manager
ESIC, ESIC Buildings
Kotla Road,
Behind Foreign Post Office
New Delhi.

20.The Secretary
Tamil Nadu Electricity board
Chennai.

21.The Managing Director
National Insurance Company
3, Middleton Street
Calcutta-700 071.

22.The President
B&C Mills Employees Coop. Society
48, Cooks Road
Perambur Barracks
Chenai-600 012.

23.The Secretary
Ministry of Labour
Shram Shakti Bhawan
New Delhi.

24.The Secretary
Ministry of Railways
Rail Bhawan, New Delhi.

25.The Secretary
Ministry of Law, Justice & Co. Affairs
Department of Company Affairs
Shastri Bhawan.

26.The Secretary
Department of Revenue
Government of Tamil Nadu
Chennai.

27.The President
Binny Employees Union
177, Thambu Chetty Street
Chennai-1.

28.Federal Bank Ltd.,
Head Office
Alwaye-683 101.

29.Mr.I.R.Perumal
Textile Commissioner
Nrupathunga Road
Rashtrothan Building
Bangalore-560 001.

30.Municipal Corporation of Chennai
C/o.M/s.Binny Ltd.,
65, Armenien Street
Chennai-1.

31.Bangalore City Corporation
Bangalore Mahanagar
N.R.Square, Bangalore-2.

32.Bangalore Development Authority
T.Choudayya Road
Bangalore-560 002.
33.Gas Authority of India
16, Bhikaji Cama Place
R.K.Puram
New Delhi-110 066.

34.The President
Binny Beach Engineering Anna
Thozhilalar Sangam
P.O.Box No.8677
Chennai-114.

35.Central Board of Excise & Customs
North Block,
New Delhi.

36.Directorate of Income Tax (Recovery)
Mayur Bhawan
Behind Super Bazar
Connaught Place, New Delhi.

37.Central Board of Direct Taxes
North Block, New Delhi.

38.R.Swaminathan

39.Unit Trust of India
13, Sir Vithaldas Thackersay Marg
Mumbai-400 020.

40.R.Kannan
Special Director to BIFR
576, B.Mahesh
Jane Jamshedpur Road
Matunga, Mumbai-19.

41.Thyagarajan
Assistant General Manager
State Bank of India
Rehabilitation and Recovery Branch
103-A, 5th Floor, Anna Salai
Chennai-2.

42.V.Sadasivam
C/o.M/s.Row & Reddy
Advocates, No.156
Thambu Chetty Street
Chennai-1.

43.G.Arul Xavier
(Rep-Chennai Perambur B&C Mill)
No.33335/1999, V.O.C.Street
Ponniamman Medu, Chennai-110.

44.The Deputy Registrar
Cooperative Department
Chennai-20.

45.M.Pushparaj
President
B&C Mills Employees Quarters
N.W.G.901, 6/2 Barracks Village
P.B.Road, Chennai-12.

46.ETA-Mauritius Ltd
(Co-Promoter)
5, Duke Edinburgh Avenue
P.O.Box.627
Port Louis, Mauritius.

47.The President

Chennai Chengai Podu Thozhilalar Sangam
18, Rotier Street, Choolai
Chennai-12.

48.Vicek Mady

49.Employees Provident Fund Organisation
Sub-Accounts Office
No.3, Rajaji Salai
Tambaram, Chennai-45.

50.M.R.Srinivasan

51.M/s.G.A.Electric Co.
Old No.36/1, 14 Street
V Block (Opp:6th Main Road)
Anna Nagar, Chennai-40

52.M/s.DCV Limited
"Nirmal" 3rd Floor
Nariman Point
Mumbai-600 021.

53.Carnatic Real Estate Limited (CREL)
705, Spencer Plaza
769, Anna Salai
Chennai-2.

54.Madras Labour Union
rep. by its President
Mr.R.Kuchelan
176, Strahans Road
Chennai-12.
(Impleaded by order dated 25/7/2003
in WPMP.No.21239/2003)

55.Binny Mills Labour Association (Regd)
rep. by its Secretary, No.13/14,
Madhurai Mudaliar Road, Jolly Mohalla
Cottonpet, Bangalore-560 053.
(Impleaded by order dated 25/7/2003
in WPMP.No.23799/2003)

56.S.Surendran

57.E.Benjamin

58.P.Haribabu

59.C.Dasaratharam

60.R.S.Kasiviswanathan

61.Angel B.Ponniah

62.P.G.Anand

63.R.A.Rawoof

64.C.Kuppusamy

65.J.Mohanraj

66.P.R.Govindan

67.R.S.C.Sukumar

68.M.Karunakaran

69.K.V.Srinivasan

70.Anthony Francis

71.B.Chockalingam

72.K.Sathyarao

73.A.Chellappa

74.Ahmed Ali

75.B.Natarajan

76.V.Ramakrishnan

77.V.Jayathilagan

78.Kalaivani Selvam

79.S.Gunasekaran

80.K.Balakrishnan

81.M.R.Jayaprakash Narayan Lal

82.Md.Inayathullah

83.T.R.Srinivasan

84.N.Subramanyam

85.B.Rodrigues

86.A.Chidambaram Kuttalam Pillai
(respondents 56 to 86 impleaded
by order dated 25/7/2003 in
WPMP.No.25094/2003)

87.K.S.Aghoram & G.Harish Chandra Reddy
SSI Buildings, 100 Feet Road
Vadapalani, Chennai-26.
(impleaded by order dated 29/7/2003
in WPMP.No.26319/2003) .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

!For Petitioner : Mr.R.Krishnamurthy,
Senior Counsel

^For Respondents : Mrs.Pushya Sitaraman

For respondents 1, 36 and 37 : Mr.M.Balachandar

For respondents 3 and 41 : Mr.P.L.Narayanan

For respondents 4 and 5 : Mr.Rangarajan

For respondent 6 : Mr.Ramalingam

For respondents 7 and 8 : Mr.M.S.Palanisamy, AGP

For respondents 11, 22, 26 & 44 : Mr.K.Kumar, ACGSC

For respondent 12 : Mr.Vasan for respodnent 15
Mr.N.G.R.Prasad

For respondents 16 to 18, 27,
34, 42, and 56 to 86
Mr.V.K.Vijayaraghavan
For respondent 19 Mr.G.Vasudevan

For respondent 20 Mr.V.G.Suresh Kumar

For respondent 24 Mr.Murali for respodnent 28
Mr.S.Jegadeeswaran

For respodents 43 and 45 Mr.V.Ayyathurai

for respondent 46 Mr.G.Purushotaman

for respondent 47 Mr.V.Vibhishanan
for respondent 49 Mr.Neelakandan
for respondent 54 Mr.K.M.Ramesh
for respondent 55 Mr.T.K.Bhaskar
for respondent 87

:ORDER

I - THE SUBSTANTIAL ISSUE

Whether the 1st respondent, namely the Appellate Authority for Industrial and Financial Reconstruction (for brevity "the AAIFR") and 2nd respondent, namely the Board of Industrial and Financial Reconstruction (for brevity "the BIFR"), statutory authorities under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity "the SIC Act") have exercised their discretionary powers conferred under the provisions of the SIC Act blended with the duty cast on them under the SIC Act, is the short, but, vital issue that arises for my consideration in the above writ petition, testing the same in the teeth of judicial review conferred under Article 226 of the Constitution of India, to render complete justice in order to achieve the object of the above legislation.

2.1. The petitioner company is having the following divisions:
(a) a textile division manufacturing and marketing cotton, silk and man-made fibre blended fabrics and woolen blended fabrics like cotswol and Angola having its mills, namely Buckingham and Carnatic Mills (B &C Mills) at Perambur (Chennai) and Bangalore;
(b) an Engineering Division (manufacturing and marketing of C.I. Castings, Forgings, Sugar Mill Machinery and Equipment, Rice Mills, Granite Cutting Machinery, Electric Smelting Furnaces, Mini-Cement Plants and structural fabrication, ship repair works at Meenambakkam, Chennai;
(c) a Services Division (marketing of engineering and miscellaneous products) at Armenian Street, Chennai, Handloom, Power Loom and Woolen products and Hosiery at Armenian Street, Chennai,
besides acting as shipping, stevedoring and clearing and forwarding agent at Visakhapatnam, Chennai, Quilon and Mangalore.

2.2. It is rather unfortunate that Buckingham and Carnatic Mills (for brevity "the B&C Mills"), one of the biggest textile mills in the whole of Asia till recently, owned by the petitioner company was declared by the BIFR, by an order dated 15.10.1993, to be a sick industrial company under the provisions of the SIC Act, where under, the BIFR appointed the Industrial Development Bank of India (for brevity " IDBI"), represented by the fourth respondent herein, as the Operating Agency under Section 17(3) of the SIC Act, and the Company continues to suffer the throttle from the financial institutions for almost all these 10 years, of course landing in coma now and then, but under the care of the BIFR for the approval of a comprehensive techno-economic viable scheme, for its very survival, revival and rehabilitation.

2.3. The present writ petition is thus directed against the order passed by the AAIFR dated 9.5.2003 made in Appeal No.83 of 2003, passed under Section 25(1) of the SIC Act, confirming the orders of the BIFR dated 24.2.2003 in Case No.48 of 1993, refusing to sanction the revised draft rehabilitation scheme submitted by the petitioner on 14.2.2003; declining the request of the petitioner company for sale of 126 0 grounds of land situated at Perambur, Chennai for Rs.60 Crores as provided in the scheme dated 14.2.2003; and directing the sale thereof by advertisement inviting tenders through the Asset Sale Committee (ASC) comprising of the Operating Agency (IDBI), State Bank of India, Indian Bank (Lead Bank) and the petitioner company.

II - LAW ON THE ISSUE

3.1. Before referring to the backdrop of the case that led the petitioner to approach this Court in the above writ petition, it would be more appropriate to refer the scope and object of the SIC Act, the powers and obligations conferred on the statutory authorities, viz., the AAIFR and BIFR, in order to achieve the objects of the SIC Act, as well as the decisions of the Apex Court in that regard.

3.2. The SIC Act was enacted intending to make, in the public interest, special provisions with a view to secure the timely detection of sick and potentially sick companies owning industrial undertakings; for speedy determination, by a Board of experts, of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies; for expeditious enforcement of the measures so determined; and for matters connected therewith or incidental thereto. Therefore, it is clear that the SIC Act has been brought in the statute book in the public interest.

3.3. The preventive, ameliorative, remedial and other measures are required to be determined by the body of experts expeditiously or otherwise, the ill effects of the sickness in industrial companies such as,

(i) loss of production;
(ii) loss of employment;
(iii)loss of revenue to the Central and State Governments; and

(iv) locking of investable funds of the banks and financial institutions,

are serious concerns not only to the company in question and to the Central and State Governments, but also to the society at large. It would, therefore, be imperative to revive such sick industrial companies as quickly as possible and salvage the productive assets and realise the amounts due to the banks and financial institutions, as otherwise the economy of the country itself would be eroded.

3.4. It is needless to point out that the industrialist must also have a vision, real desire and should contribute for the revival of such sick industry, or otherwise, it is not possible to cure or remove the causes of sickness.

3.5. Whenever an industry becomes sick, it also results into a challenge for the very survival or existence of the depending employees, whose continuous suffering, in turn, has got a negative impact on the society.

4.1. It is apt to refer some of the relevant provisions of the SIC Act and the procedure to be followed by the statutory authorities, namely the BIFR and AAIFR, thereunder, to achieve the objects of the legislation under the scheme of the SIC Act.

4.2. While Chapter-I of the SIC Act deals with the preliminary provisions such as definitions, declarations as to the special status of the enactment, Chapter-II of the SIC Act deals with the constitution of the statutory authorities, namely the BIFR and the AAIFR.

4.3.1. Chapter-III, namely Sections 15 to 22A of the SIC Act, deals with references, inquiries and schemes in respect of a sick industrial company.

4.3.2. Section 15 provides that where an industrial company has become a sick industrial company a reference shall be made to the BIFR for the determination of measures which shall be adopted with respect to the company. Under sub-section (1) of Section 15 such reference is required to be made by the Board of Directors of the company within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year at the end of which the company has become a sick industrial company. Sub-section (2) of Section 15 enables a reference to be made by the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank.

4.3.3. Section 16 empowers the BIFR to make such inquiry as it may deem fit for determining whether an industrial company has become a sick industrial company upon receipt of a reference with respect to such company under Section 15 or upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

4.3.4. Section 17 provides that if after making an inquiry under Section 16, the BIFR is satisfied that a company has become a sick industrial company, the BIFR shall decide, by an order in writing, whether it is practicable for the company to make its networth exceed the accumulated losses within a reasonable time and in that event the BIFR shall, by order in writing, give such time to the company as it may deem fit to make its networth exceed the accumulated losses. If the BIFR decides that it is not practicable for a sick industrial company to make its networth exceed the accumulated losses within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in Section 18 in relation to the said company it may, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

4.3.5. Section 18 makes provision for preparation and sanction by the BIFR of a scheme with respect to a sick industrial company providing for any one or more of the measures, namely,
(i) financial reconstruction of the sick industrial company;
(ii) the proper management of the sick industrial company by change in, or take over of, management of the sick industrial company;
(iii) the amalgamation of the sick industrial company with any other company or of any other company with the sick industrial company;
(iv) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;
(v) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;
(vi) such other preventive, ameliorative and remedial measures as may be appropriate; and
(vii) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures referred to above.

4.3.6. Section 19 makes provision for rehabilitation by giving financial assistance if the scheme provides for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or authority to the sick industrial company.

4.3.7. Section 20 provides that in cases where the BIFR, after making an inquiry under Section 16 and after consideration of all the relevant facts and circumstances, is of the opinion that the sick industrial company is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the High Court concerned. Under subsection (4) of Section 20 the BIFR is empowered to cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of Section 529-A, and other provisions of the Companies Act, 1956.

4.3.8. For proper discharge of its functions under the Act, Section 21 confers on the BIFR the power with respect to matters specified in sub-sections (a) to (d) therein, viz., relating to preparation of inventory of assets and liabilities and books of account; list of shareholders; valuation report in respect of shares and assets; and an estimate of reserve price, lease rent or share exchange ratio.

4.3.9. As per Section 22, where an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 is pending relating to an industrial company, by virtue of Section 22, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or

execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the BIFR or, as the case may be, the Appellate Authority, namely the AAIFR.

4.3.10. Section 22-A, which was introduced by Act 12 of 1994, provides that the BIFR may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the BIFR, any of its assets (a) during the period of preparation or consideration of the scheme under Section 18, and (b) during the period beginning with the recording of opinion by the BIFR for winding up of the company under sub-section (1) of Section 20 and up to commencement of the proceedings relating to the winding up before the High Court.

4.4. Chapter-IV, namely Sections 23 to 36, contains provisions relating to proceedings in case of potentially sick industrial companies, misfeasance proceedings, appeals and other miscellaneous matters.

4.5. From the perusal of the aforesaid provisions of the SIC Act, it is clear that the SIC Act makes a distinction between the role assigned to the BIFR in relation to a sick industrial company and in respect of a potentially sick industrial company, for which provisions are contained in Sections 23, 23-A and 23-B in Chapter-IV of the SIC Act.

4.6. It is obvious that the BIFR has been assigned a more active role in respect of sick industrial companies, in the sense that on receipt of reference under Section 15 or upon information received with respect to such a company or upon its knowledge about the condition of the company, the BIFR is required to make such inquiry as it may deem fit for determining whether an industrial company has become a sick industrial company and under Sections 16 and 17 the BIFR makes suitable order after completion of the inquiry and a scheme may be prepared and sanctioned in relation to a sick industrial company under Section 18 of the SIC Act.

4.7. Undoubtedly, the SIC Act provides for rehabilitation by way of financial assistance in Section 19 and express provision has been made in Section 22-A empowering the BIFR to direct a sick industrial company not to dispose of any of its assets except with the consent of the BIFR during the period mentioned therein. Of course, in respect of a potentially sick industrial company, the BIFR has been assigned a more limited role of requiring such a company to furnish periodic information as to the steps taken by the company to make its net worth exceed its accumulated losses. The BIFR is also required to appoint an operating agency, in the instant case, IDBI, to inquire into and make a report with respect to the matters specified in the order and on the basis of such report the BIFR may form its opinion that the company is not likely to become viable in future and that it is just and

equitable that it should be wound up. Therefore, it is clear that the winding up of the sick industrial company should be opted as a last resort where the operating agency reports that it is not viable to revive or rehabilitate the sick industrial company. There is no provision even under Section 22-A of the SIC Act to impose a total ban on the power of a sick industrial company to dispose of a part of its assets and the only restriction is that the right of a sick industrial company to dispose of its assets is subject to the specific orders of the BIFR for the same under Section 22A of the SIC Act. In other words, making of a reference under Section 15 of the SIC Act, by itself, does not ipso facto attract any restriction on the right of a sick industrial company to dispose of its assets. A specific order, contemplated by the BIFR under Section 22A for disposing the assets of the Sick Industrial Company, can be passed after considering the matter in accordance with the provisions of Sections 16 and 17 of the SIC Act and framing a scheme under Section 18 of the SIC Act.

4.8. A Division Bench of the Allahabad High Court in U.P.S.S.CORPN. KARAMCHARI ASSOCIATION Vs. U.P.STATE SUGAR CORPN. LTD. (Civil Misc. Writ Petn. No.27998 of 1994, dated 9.12.1994) held as follows:
"During the pendency of proceedings either under Section 16 or consideration of any scheme under Section 17, in the examination of the sickness of a sick industrial company, or, for that matter, a potentially sick industrial company within the meaning of Chapter IV, alienation of assets is not envisaged under the Act of 1985. Equity prohibits it.
This is a rule of common sense and prudence that the substratum or the equity base of a company must not be reduced while a special statutory authority (the Board) examines the matter of industrial sickness. It is only this examination which permits the Board to come to a conclusion after having gone through the experience which is presented under the Act to either make arrangements for the rehabilitation of a company or to recommend winding up of a company, when the circumstances are such that the erosion of its assets is of no avail, implying thereby that the sickness is terminal and its death is imminent. The power of the Board to revive a company cannot be interfered with by alienation of its assets as that would tantamount to violation of the law, i.e., the Act of 1985."

4.9. However, the above view of the Division Bench of the Allahabad High Court in U.P.S.S.CORPN. KARAMCHARI ASSOCIATION case, referred supra, was rejected by the Apex Court, on appeal, in U.P.STATE SUGAR CORPN. LTD. Vs. U.P.S.S.CORPN. KARAMCHARI ASSOCIATION, reported in AIR 1995 SC 1484, holding as follows:-
"We find it difficult to subscribe to this view. It runs counter to the express terms of Section 22-A of the Act which confers a limited power on the Board to pass an order prohibiting a sick industrial company from disposing of its assets only during the period specified in clauses (a) and (b). Except when the Board passes an express order in accordance with the provisions of Section 22-A, it is not possible to infer a limitation from the provisions of the Act on the right of a sick industrial company or a potentially sick industrial company to dispose of its assets. Insofar as a potentially sick industrial company is concerned, there appears to be no reason why such a company, in order to revive itself, should not be able to dispose of its

assets. The High Court, in our opinion, was in error in holding that the Corporation was not competent to sell the 8 sugar mills which it was proposing to sell in view of the provisions contained in the Act. The judgment of the High Court cannot, therefore, be upheld and the appeal must be allowed." (emphasis supplied)

4.10. The statutory authorities, namely the BIFR and AAIFR are, therefore, under an obligation to exercise the powers, much less their discretionary powers, blended with the duty cast on them, in order to achieve the objects of the SIC Act, namely:-
(i) to afford maximum protection of employment,
(ii) to optimise the use of financial resources,
(iii) to salvage the assets of production,
(iv) to realise the amounts due to the banks, and
(v) to replace the existing time-consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts to safeguard the economy of the country and protect viably sick units.

4.11. The SIC Act is, thus, intended to revive and rehabilitate sick industries before they can be wound up under the Companies Act, 1956 , as held by the Apex Court in REAL VALUE APPLIANCES LTD. Vs. CANARA BANK reported in 1998 (5) SCC 554.

4.12. Failure to keep a track of the above object of the legislation and the principles laid thereunder, in my considered opinion, would not only render the very action purported to be taken under Sections 15 to 22A of the Act infructuous, but would also end in miscarriage of justice, as mere exercise of discretion without commitment to the duty cast on the authorities, viz., BIFR and AAIFR, is of no useful purpose.

III - GENESIS
5. A brief note of the schemes formulated and offered by the petitioner sick industrial company, the approval of the same by the Operating Agency (IDBI) and the sanction, failure and rejection of the schemes by the BIFR, as well as the AAIFR, which necessitated the petitioner company to approach this Court in the above writ petition is relevant to be mentioned, before proceeding further as follows:-
(i) The petitioner company incurred cash losses consecutively for two years, i.e, in the years 1992 and 1993, and as on 31.3.1993, the networth of the Company had been completely eroded. Hence, the petitioner company filed a reference under Section 15(1) of the SIC Act on 7.7.1993 and the same was registered as Case No.48 of 1993.

(ii) The BIFR declared the petitioner company as a sick industrial company within the meaning of Section 3(1) of the SIC Act and appointed IDBI as the Operating Agency to formulate a rehabilitation scheme in respect of the petitioner company.

(iii) Several hearings took place before the BIFR in respect of rehabilitation of the petitioner company and the BIFR vide its order dated 13.6.1994 sanctioned a rehabilitation scheme for the petitioner Company, which includes

settlement of dues to consortium banks, financial institutions and the debenture holders as one time settlement, as well as the dues payable to the workers. The scheme envisages restructuring the company by giving off the Engineering Division into two separate companies, viz., Binny Engineering Works Ltd. (BEWL) and Binny Processors Ltd (BPL).

(iv) However, by order dated 12.1.1996, the BIFR de-registered the petitioner company from its purview for the reason that the networth of the petitioner company had exceeded its accumulated losses as on 31.3.1995.

(v) But, upon a writ petition, viz., W.P.No.1198 of 1997, filed by the workers of the petitioner Company alleging deviation in the implementation of the scheme, this Court by order dated 25.2.1998 in the said W.P.No.1198 of 1997 set aside the order dated 12.1.1996 of the BIFR regarding de-registration of the petitioner Company.

(vi) Pursuant to the order of this Court dated 25.2.1998 in W.P.No.11 98 of 1997, the petitioner Company submitted a fresh rehabilitation proposal to the BIFR which provided for:-

(a) bifurcation of the assets and liabilities of the petitioner company between the original promoters and the co-promoters;
(b) Voluntary Retirement Scheme for the entire workforce both at Chennai and Bangalore units;
(c) relocation of the manufacturing facilities and processing house from Chennai to Singaparumal Koil, near Kancheepuram, as well as Bangalore Silk Mills at a new location in Bangalore; and
(d) investment in subsidiary, namely Binny Engineering Ltd (BEL).

Even though the said revised proposal was broadly accepted by the financial institutions and the State Bank of India, the same was not accepted by other consortium banks.

(vii) Pending the above proceedings before the BIFR, the petitioner management and the workers entered into a settlement under Section 12(3) of the Industrial Disputes Act on 28.3.1998, in the presence of the then Hon'ble the Chief Minister, which provided for Voluntary Retirement Scheme and settlement of Compensation and terminal benefits to the employees. The terms of the settlement read as follows:
"
1.Binny Mills will reopen on 14.1.1999.
2.When the mill reopens the Management would provide employment to not more than 1000 workmen from among the existing permanent workmen at Binny Mills itself, at Chennai.
3.Such of those workmen and staff members who opt to retire under the Voluntary Retirement Scheme will be paid Rs.1.25 Lakhs as compensation. Besides the above, eligible gratuity as per law will be calculated separately and paid. The above compensation and the gratuity amount will be paid in two installments by the Management. Out of the total amount, the first installment of 50% will be paid on 27.5.1998 and the second installment on 15.9.1998. The above two installments will be paid through cheque.

4.All trainees will be paid a lump sum amount of Rs.50,000/- inclusive of their gratuity and compensation and this amount will be paid on 27.5.1998.
5.The Management will not recover from the employees Rs.6 Crores which was spend towards paying wages for 2 months and providing rations and provisions to the employees. Similarly, workmen and staff members will not press their demand that they should be paid wages for the closure period.
6.All workmen and staff members will be paid 15 days wages as exgratia within a week from the date of this settlement.
7.The Management has agreed to employ not more than 1000 workmen at Binny Mills. If more employees and trainees than the above opt to remain in the service of the Company, the decision as to where they should be posted would be left to the Chief Minister and it was agreed that his decision in this regard would be accepted by the Management and the Unions.
8.The terms governing wages to be paid and other issues in respect of those workmen who opt to remain in service till the reopening of the Mills on 14.1.1999 would be left to the decision of the Chief Minister and it was agreed that his decision in this regard would be accepted by the Management and the Unions.
9.The employment rights of the employees will continue till the final settlement of compensation and gratuity in respect of those workmen who opt for voluntary retirement scheme.
10.The Unions will not interfere in the administrative rights of the Management including that of recruitment. Similarly the management will not interfere in the rights of the Union.
11.After implementation of the above settlement in full, all the cases will be withdrawn.

Both the parties fully agree to the above settlement."

(viii) Hence, a third revised rehabilitation proposal was submitted, which provided for reduction in cost of scheme. Even though the same was accepted in the joint discussion dated 15.3.1999 by all, the consortium banks did not agree to grant any concession in the interest rates. As a result, the said proposal was declared failed by the BIFR on 17.9.1999 and IDBI was reappointed as Operating Agency under Section 17(3) of the SIC Act.

(ix) Thereafter, the petitioner company submitted another rehabilitation scheme on 19.11.1999 and again submitted another revised proposal on 13.12.1999 and thereafter, two more proposals one on 24.5.2000 and another on 29.5.2000 for scrutinization by the IDBI as per the guidelines enclosed by the BIFR with the proceedings dated 31.7.2000. A hearing was held to examine the above proposals, dated 19.11.1999, 13.12.1999, 24.5.2000, 29.5.2000, before the BIFR on 31.7.2000 and in the said meeting the Operating Agency (IDBI) represented that the company submitted another proposal on 10.7.2000.

(x) Again, a hearing was held before the BIFR in the presence of the petitioner company, Operating Agency, financial institutions and consortium banks on 1.3.2001. In the said hearing, the Bench observed that (a) there was a broad consensus among all concerned; (b) the company could be revived with one time settlement of the dues of SBI and other banks; (c) a rehabilitation scheme could be formulated by the Operating Agency, and accordingly, the BIFR

directed the Operating Agency (IDBI) to suggest some amendments to the draft rehabilitation scheme; and (d) constituted an Asset Sale Committee for the sale of surplus assets of the company.

(xi) Pursuant to the said hearing held on 1.3.2001, the BIFR in its order dated 29.5.2001 directed the draft rehabilitation scheme to be circulated to all the parties concerned inviting their suggestions and thereafter, a meeting was held among all the parties concerned on 6.8.2001. The Operating Agency, IDBI, by its letter dated 5.10.2001 forwarded the revised draft rehabilitation scheme incorporating the changes which were agreed in the meeting held on 6.8.2001.

(xii) The draft rehabilitation scheme circulated by the IDBI by letter dated 5.10.2001, inter alia provides that:-
(a) the petitioner company would be split into two companies, viz., Binny Ltd., and Binny Karnataka Ltd. (a new company to be incorporated) as at 1.4.2001, after repaying the dues and giving effect to all the reliefs and concessions mentioned in the scheme;

(b) the said two companies would function under two independent managements;

(c) all the existing share holders would have 50% shareholding of their respective shareholding in each of the company;

(d) both the promoter groups would have 50% shareholding in both the companies on reciprocal basis;

(e) after discharging all the liabilities relating to workers, the secured creditors and statutory liabilities, both the promoters and co-promoters would exchange their shareholdings in both the companies between themselves so as to enable the promoter group to run M/s.Binny Ltd. and the co-promoter group to run M/s.Binny Karnataka Ltd., independently;

(f) to develop the real estate properties of the petitioner company in a joint venture with any third party on such terms and conditions to be approved by the Asset Sale Committee, including transferring such properties to 100% subsidiary of M/s.Binny Ltd. and M/s.Binny Karnataka Ltd.;

(g) the transfer of properties to any subsidiary would be done with the prior approval of BIFR;

(h) if any amount is realised through sale of immovable properties and sale of machinery within 90 days of sanction of the scheme, such amount would be deposited in a separate interest bearing 'No-lien account' with the Operating Agency;

(i) the sale proceeds along with loans from the associate companies of the promoters and co-promoters were to be distributed by the operating agency for payment of the secured creditors, statutory liabilities and workers dues within 90 days from the date of sanction of the scheme;

(j) in case the funds raised within 90 days by sale of assets and brought in by the promoters/co- promoters were not sufficient to pay all the secured creditors, statutory liabilities and workers dues, the amount lying in the 'No-Lien' account to the extent of proceeds from the sale of aforesaid assets would be distributed by the Operating Agency among first charge holders on pro rata basis;

(k) if any amount is still left, it would be paid to the workers and crystalised statutory liabilities on pro rata basis and if still some amount is left, it would be paid to the second charge holders and then to the unsecured creditors on pro rata basis in that order; and the workers shall accept the entire claim and vacate the quarters occupied by them; shall hand over vacant possession to the management before final settlement of the dues; shall also withdraw all cases pending in various forums on settlement of the dues; and shall not disrupt any activity which would be undertaken by the management at the B & C Mill premises including that of sale of machinery, yarn, scrap, etc.

(l) after de-merger, each company would meet their various commitments as per the provisions of the sanctioned scheme;

(m) The Central and State Governments, viz., the Department of Income Tax, Ministry of Labour, Ministry of Railways, Ministry of Company Affairs, as well the Public Works Department, Tamil Nadu Electricity Board, Department of Sales Tax, Department of Urban Land Tax, Corporation of Chennai, Government of Karnataka, and Bangalore Development Authority, shall consider the waiver and concession in respect of the dues payable by the petitioner as the case may be.

(n) IDBI would be designated as Monitoring Agency (MA) to review the operation of the Company on monthly basis in all aspects and to implement the project.

(xiii) A further hearing was held before the BIFR on the above proposal of the IDBI on 31.10.2001, wherein the financial institutions including IDBI, ICICI and IFCI have given their consent to the reliefs and concessions as provided under the draft rehabilitation scheme enclosed by the IDBI along with their letter dated 5.10.2001.

(xiv) Similarly, the representatives of SBI requested the BIFR to include SBI as a member in the Asset Sale Committee. Hence, the BIFR amended the draft rehabilitation scheme in their minutes dated 31.10.20 01 and included the SBI in the Asset Sale Committee, to the extent as follows:-
"If any amount is realised through sale of immovable properties and sale of machinery within 90 days of sanctioning of the scheme, such amount shall be deposited in a separate interest bearing 'No lien account' with the Operating Agency. This amount along with the loans from the associate companies of the promoters and co-promoters shall be distributed by the Operating Agency for payment of the secured creditors, statutory liabilities and workers dues within 90 days and as per the scheme. However, in case the funds raised within 90 days by sale of assets and brought in by the promoter/co-promoter were not sufficient to pay all the secured creditors, statutory liabilities

and workers dues, the amount lying in the 'No-lien' account to the extent of sale proceeds of the aforesaid assets would be distributed by the Operating Agency among first charge holders on pro rata basis. After demerger, each company would meet its various commitments, as per the provisions of the rehabilitation scheme sanctioned by BIFR."

(xv) Thereafter, the matter was adjourned for further hearing on 13.12.2001 and finally the scheme was sanctioned by order dated 13.12.20 01 of the BIFR, but holding that the period of 90 days provided for in the scheme to make payment of the one time settlement to the financial institutions would commence from 13.12.2001 and would, therefore, expire on 12.3.2002.

(xvi) It is, therefore, the scheme approved by the IDBI by the letter dated 5.10.2001, which provides for splitting of the petitioner company into two companies; for sale of properties of the petitioner company and transferring the properties to the subsidiary companies with the prior approval of the BIFR; and for settlement of the dues to the financial institutions and consortium banks in one time settlement and thereafter to settle the dues to the workers as second charge holder and then to the unsecured creditors on pro rata basis, in that order, of course with a modification as referred to above, was ultimately sanctioned.

(xvii) However, the SBI, by their letter dated 30.1.2002, informed BIFR that the 90 days period provided for the settlement of dues should reckon from 31.10.2001, when the financial institutions and Banks had agreed for the scheme but not from 13.12.2001, and the BIFR, unilaterally, without any hearing, by order dated 8.2.2002 modified the order dated 13.12.2001 to the effect that the period of 90 days to settle the dues would reckon from 31.10.2001, instead of 13.12.2001.

(xviii) Hence, the petitioner company preferred an appeal before the AAIFR for the limited purpose that the period of 90 days to settle the dues would reckon from 13.12.2001 and not from 31.10.2001 and in the said appeal, the AAIFR, by order dated 11.3.2002, taking into consideration that what was sanctioned by the BIFR by order dated 13.12.2001 is only a scheme which was approved in the meeting on 31.10.2001 , held that the period of 90 days for settlement of dues as per the scheme would reckon from 28.12.2001, i.e., the date following the date on which the company received the copy of the order sanctioning the scheme dated 13.12.2001, and set aside the order dated 8.2.2002 of the BIFR.

(xix) In the meanwhile, a writ petition W.P.No.23404 of 2001 was filed by the workers seeking a direction to the petitioner Company to settle the entire amount based on the Voluntary Retirement Scheme prepared under the settlement entered under Section 12(3) of the Industrial Disputes Act on 28.3.1998 and to forbear the petitioner company from evicting the workers from the quarters before settling the entire settlement amount as per the settlement entered under Section 12(3) of the Industrial Disputes Act with accrued interest. The High Court, by order dated 8.3.2002, in the said W.P.No.23404 of 2001 appointed a Retired District Judge, Thiru S.Vijayarangam as Commissioner to collect the cheques from the petitioner company for the amounts due and hand over the cheque to the concerned occupant after collecting the key and taking

possession of the quarters on behalf of the Management of the petitioner Company, if necessary with police assistance, and the said order had become final.

(xx) Since the dues were not paid within 90 days from 28.12.2001, the financial institutions, consortium banks and the Unit Trust of India, requested for the payment of interest in terms of the sanctioned scheme and therefore, a meeting was convened on 24.4.2002 calling on the promoters to implement the scheme without any modification.

(xxi) A show cause notice was issued to the petitioner company on 1.5 .2002 for non-payment of dues of the financial institutions and banks as per the sanctioned scheme and a status report was called for from the Operating Agency (IDBI).

(xxii) On receipt of the said show cause notice, the Company submitted its reply to the BIFR, and the Operating Agency (IDBI), which was appointed as the monitoring agency as per the sanction order of the BIFR, also submitted a status report dated 25.6.2002.

(xxiii) As per the direction of the Asset Sale Committee, the Company had advertised for the sale of 1260 grounds at Perambur, Chennai, but did not receive any valid response and finally they got an offer from Carnatic Real Estate Limited (CREL), through BREAD, a subsidiary company to the petitioner company, for a consideration of Rs.75 Crores payable as follows:

(Rs. Crores)
Advance to be paid
6.50
After 90 days of sanction of scheme by BIFR and transfer of property to BREAD
43.50
Within 18 months of sanction of the scheme
25.00
Total
75.00

The above proposal of the CREL was also discussed in the meeting held on 26.6.2002, wherein it was felt by the Asset Sale Committee that sale consideration of Rs.77 crores could be considered reasonable on present value basis.

(xxiv) Thereafter, a meeting was convened on 28.6.2002 wherein it was reported by the promoters that they had promptly brought in Rs.19.50 Crores which was directly distributed to the workers. It was also brought to the notice that out of Rs.19.50 Crores, Rs.6.50 Crores was paid by Carnatic Real Estate Limited (CREL), a joint venture Company with Binny Real Estate and Assets Developers Ltd (BREAD), a subsidiary of Binny Limited. Since, the proposal of the CREL was not impressive to the settlement of the dues of the secured creditors, workers and financial institutions, the same got frustrated.

(xxv) The BIFR, however, found fault with the petitioner Company for having paid the said Rs.19.50 Crores directly to the workers instead of routing the

same through the Monitoring Agency, without paying to the secured creditors, namely financial institutions and Banks, as provided in the sanctioned scheme. In that view, the BIFR, by their order dated 1.7.2002, found that no useful purpose would be served by further delaying the recovery of dues by the secured creditors and allow the company to enjoy the protective umbrella of the SIC Act, and accordingly declared the scheme sanctioned on 31.10.2001 as failed; prima facie came to be conclusion that the petitioner company is not likely to make its networth exceed its accumulated losses within a reasonable time; recommended to wind up the company under Section 20(1) of the SIC Act; and directed to issue a show cause notice for the winding up. However, by the same order dated 1.7.2002, the BIFR expressed their willingness to consider any viable rehabilitation proposal which the promoters with or without a co-promoter may submit within 30 days from the date of receipt of the order dated 1.7.2002, and disbanded the Asset Sale Committee with immediate effect and restrained the company from proceeding further in the matter in regard to sale/ development of properties of the company.

(xxvi) Pursuant to the option given to the petitioner in the order dated 1.7.2002, the petitioner company submitted a revised draft rehabilitation scheme to the BIFR and the BIFR, in turn, directed the Operating Agency to examine the same. Accordingly, a joint meeting was convened on 10.10.2002. In the meeting held on 10.10.2002, the petitioner company also brought to the notice about the proposed sale of 126 0 Grounds of land proposed to be transferred to BREAD, a subsidiary company at Rs.79 Crores. In the said meeting the Promoters had agreed to deposit Rs.20 Crores on or before 28.10.2002. But, since the petitioner could not deposit Rs.20 Crores with the Operating Agency till 25.10.2002, as they only anticipated to effect the sale of properties to BREAD, a subsidiary company and proposed to take loans from other banks, the representatives of the financial institutions, consortium banks, debenture holders as well as the Ministry of Textile favoured winding up of the Company.

(xxvii) Therefore, the BIFR, by proceedings dated 28.10.2002 directed the petitioner company/promoters/ co-promoters to transfer/deposit Rs.20 Crores within 2/3 days in a 'No-Lien Account' with the Operating Agency (IDBI), in the name of Binny Limited, stating that the amount would become a "Lien" marked deposit in case a scheme was sanctioned. The BIFR specifically observed that the secured creditors would have a final view including on the valuation and transfer price of the assets/property, and the Company would allow the bankers and other secured creditors to inspect the properties/records for satisfying themselves and the assets sold/amounts received, etc., and further directed the Operating Agency, IDBI to submit its clear report within thirty days from 28.10.2002, in any case on or before 30.11.2002, after holding a discussion/joint meeting. The BIFR also permitted the workers to submit their comments on the said direction dated 28.10.2002 within 10 days. In the absence of any such proposal, the BIFR observed that they may confirm winding up orders on file.

(xxviii) Pursuant to the order dated 1.7.2002 of the BIFR disbanding the Asset

Sale Committee and the further direction dated 28.10.2002 given to the Company, promoters and co-promoters to deposit Rs.20 Crores within 2/3 days from 28.10.2002 and directing the secured creditors to take a final view including on the valuation and transfer price of the assets/property, and also directing the Company to allow the bankers and other secured creditors to inspect their properties/ records for satisfying themselves and the assets sold/amounts received, etc., the petitioner company took efforts to find offers for the sale of 1260 grounds of land located at Perambur, Chennai that belongs to the petitioner company.

(xxix) Accordingly, the petitioner company, in the light of the directions dated 28.10.2002 of the BIFR, requested the secured creditors to consider the offer received from Shri Reddy and others for payment of Rs.60 Crores within ten days from the date of sanction of the approval from the secured creditors and the BIFR, towards the sale consideration of 1260 Grounds of land located at Perambur, Chennai, explaining that even though there is a difference of Rs.15/17 Crores, the petitioner company get Rs.60 crores within 15 days which would meet the needs of the petitioner company to discharge the dues of the secured creditors, viz., financial institutions and banks in one time settlement.

(xxx) As per the directions of the BIFR dated 28.10.2002, the proposed offer of Sri Reddy and others was discussed at the joint meeting held on 9.1.2003, whereat all the secured creditors were agreeable for sale of the said property/land at the valuation/ transfer price of Rs.60 Crores, subject tot he condition that the sale proceeds shall be deposited directly in No-Lien Account with the Operating Agency, IDBI, within thirty days from the date of approval of the BIFR. This proposal, acceptance and agreement among the petitioner company and the proposed purchaser through BREAD, a subsidiary company was also agreeable to the secured creditors, viz., financial institutions and banks, workers, and the Operating Agency, IDBI, strictly in accordance with the directions of the BIFR dated 28.10.2002.

(xxxi) Accordingly, the petitioner company submitted a revised draft rehabilitation scheme on 14.2.2003, thereby agreeing to cancel the agreement entered into between the petitioner Company and the CREL, through BREAD, a subsidiary company to the petitioner company, and to proceed with the agreement entered with the proposed purchaser, viz., Shri Reddy and others for the sale of 1260 grounds of land.

(xxxii) The petitioner company also proposed to raise funds through the sale of 1260 grounds of land at a consideration of Rs.60 crores, de-merger of Binny Ltd., into two companies to be run independently by the promoters and co-promoters, shifting of the textile mills in Chennai to a new location, etc. A joint meeting was also held on 20.2.2 003 by the Operating Agency, IDBI, with respect to the Revised Draft Rehabilitation Scheme submitted by the petitioner on 14.2.2003, in which the Operating Agency, IDBI as well as IFCI, UTI AMC, SBI, ICICI, Bank of Baroda, Federal Bank, Oriental Bank of Commerce, Department of Labour, Employees Provident Fund Organisation, B&C Mills Staff Union, Madras Labour Union, Binny Beach Engineering Employees Union, Binny

Employees' Union, B&C Mills Employees' Co-operative Society, Binny Beach Engg. Anna Thozilalar Sangam, Binny Beach Engg. Workers' Union, Binny Engineering Employees Union, Binny Ltd., ETA and SSI & Dr. Reddy Labs, participated. In the said meeting, the secured creditors, consortium banks as well as the State and Central Government authorities and departments as well as the statutory authorities agreed for the revised draft rehabilitation scheme submitted on 14.2.2003. Even though the workers expressed their inability to indicate any acceptable price for the property, namely 1260 grounds, finally, it was resolved by the participants to request the BIFR to approve the proposed sale of land and the revised draft rehabilitation scheme dated 14.2.2003 .

Accordingly, the revised draft rehabilitation scheme submitted along with minutes of the meeting held on 20.2.2003 was placed for the consideration and sanction of the BIFR.

(xxxiii) The BIFR, by proceedings dated 24.2.2003, refused to grant sanction to the scheme submitted by the petitioner company dated 14.2.2003 and forwarded by the Operating Agency through the minutes dated 20.2.2003, holding that the scheme is not transparent and giving the following directions:-
(a) the company must settle the matter with CREL with regard to the implementation of the agreement entered into by them on their own, so that there is no legal hurdle in the disposal of the land;
(b) the Asset Sale Committee could be reconstituted comprising the Operating Agency (IDBI), State Bank of India (SBI), Indian Bank (lead bank) and the company for the proposed sale and the representative of the Operating Agency would be the Chairman of the Asset Sale Committee;
(c) the Asset Sale Committee would fix a reserve price for the land and the same has to be approved by the BIFR;
(d) a fresh advertisement would be issued for the sale of 1260 grounds of land at Perambur, Chennai and the Asset Sale Committee would meet within 15 days to finalise the detailed terms of sale;
(e) If no bids are received in response to the advertisement or the bids received are not acceptable to the Asset Sale Committee, the company/promoters would be free to locate buyers and finalise the deal through mutual negotiation;
(f) the advertisement should be issued within 15 days in view of the eagerness of the secured creditors;
(g) on receipt of the offers, the Asset Sale Committee would analyse the bids;
(h) the company would prepare a composite scheme including the rehabilitation of Binny Engineering Limited and submit the same to the Operating Agency (IDBI); and
(i) the amount of R.1.7 Crores would be paid to the workers out of Rs.20 crores lying in the 'No lien Account' with IDBI.

(xxxiv) Thereafter, the petitioner company entered into a memo of compromise with Carnatic Real Estate Limited (CREL) on 20.3.2003 agreeing to refund Rs.6.5 Crores with 6% simple interest per annum to CREL, cancelling the earlier agreement dated 12.3.2002 entered into between the petitioner and the CREL, through BREAD, a subsidiary company, for the sale 1260 grounds at Perambur, Chennai. The memo of compromise dated 20.3.2003 reads as follows:

"MEMO OF COMPROMISE

M/s. Binny Limited, a company incorporated under the provisions of Companies Act, 1956 and having its office at New No.106, Armenian Street, Chennai 600 001 (hereinafter referred to as "Binny") and M/s. Carnatic Real Estate Limited a company incorporated under the provisions of Companies Act, 1956 and having its office at 705, Spencer Plaza, 7 69, Anna Salai, Chennai 600 002 (hereinafter referred to as "CREL")

RECITALS
WHEREAS:
(a) CREL had entered into an agreement dated 12.3.2002 with Binny for the purchase of 1260 grounds of the Binny's property located at Perambur morefully described in the said agreement.

(b) CREL paid an advance of Rs.6.5 crores pursuant to the said agreement.

(c) The Board for Industrial and Financial Reconstruction (BIFR) had vide its order dated 24.2.2003 observed that Binny must settle the matter with CREL so that there is no legal hurdle in the disposal of the land comprising of 1260 grounds at Perambur which should be free of all encumbrances.

(d) Binny is desirous of returning the Rs.6.5 crores with interest at 6% simple interest per annum to CREL and CREL is agreeable to receive the same in full and final settlement of all claims and disputes between the parties.

The parties hereby agree to the following:

1. Pursuant to the order of the BIFR dated 24.2.2003 and letter dated 1.3.2003 addressed by CREL to Binny and IDBI, Binny hereby pays and CREL hereby acknowledges receipt of Rs.6,89,96,164/- (comprising of Rs.6.5 crores together with interest of Rs.39,96,164/- calculated at 6% simple interest p.a. From 12.3.2002 till date) in full and final settlement of all claims and disputes arising between the parties pursuant to an agreement dated 12.3.2002 entered into between them. The payment of the aforesaid sum is made by way of pay order No.050252 dated 20.3.2003 issued by the Union Bank of India, T.Nagar Branch for a sum of Rs.6,50,00,000/- and Banker's cheque No.100618 drawn on American Express Bank Limited dated 20.3.2003 for a sum of Rs.39,96,164/-.

2. The parties acknowledge that the agreement dated 12.3.2002 entered between the parties shall hereby stand cancelled without any claim whatsoever by one party to the agreement against the other.

3. Both parties agree that this Memorandum of Compromise shall be placed before the BIFR/AAIFR at its next hearing to be held on 27.3.2003 .

In witness whereof the parties hereto have set their signatures unto this agreement on 20.3.2003. "

(xxxv) Aggrieved by the order dated 24.2.2003 of the BIFR, in the light of the memo of compromise entered into between the petitioner company and CREL on

20.3.2003, the petitioner company preferred an appeal to the AAIFR seeking to set aside the order of the BIFR dated 24.2.2 003 and to approve the scheme dated 14.2.2002, expeditiously. However, the AAIFR, by order dated 9.5.2003 in Appeal No.83 of 2003, confirmed the order of the BIFR dated 24.2.2003.

(xxxvi) Hence, the above writ petition seeking a writ of Certiorarified Mandamus to call for the proceedings of the BIFR in case No.48 of 1993, dated 24.2.2003 and of the AAIFR in Appeal No.83 of 2003 dated 9.5.2003, and to consequently direct the BIFR to sanction the draft rehabilitation scheme dated 14.2.2003.

IV - IMPUGNED ORDERS

6.1. The BIFR in the order dated 24,2,2003, which is impugned in the above writ petition, refused to sanction the scheme recommended by the Operating Agency (IDBI) and rejected the proposal of sale of 1260 grounds at Perambur, Chennai, of the petitioner Company for a sum of Rs.60 crores to Shri Reddy and others through the subsidiary company of the petitioner, viz., BREAD, on the grounds that no permission of the Asset Sale Committee and the BIFR were obtained by the petitioner Company before entering into the sale agreement between the petitioner and the CREL and that the sale price for 1260 grounds, viz., Rs.60 crores, was lower than the sale price of Rs.75 Crores offered by the CREL and the price recommended by Asset Sale Committee in the meeting held on 26.6.2002, viz., Rs.77 crores.

6.2. The BIFR also made the following directions in the impugned order dated 24.2.2003:-
(a) the company must settle the matter with CREL with regard to the implementation of the agreement entered into by them on their own, so that there is no legal hurdle in the disposal of the land;

(b) the Asset Sale Committee could be reconstituted comprising the Operating Agency (IDBI), State Bank of India (SBI), Indian Bank (lead bank) and the company for the proposed sale and the representative of the Operating Agency would be the Chairman of the Asset Sale Committee;

(c) the Asset Sale Committee would fix a reserve price for the land and the same has to be approved by the BIFR;

(d) a fresh advertisement would be issued for the sale of 1260 grounds of land at Perambur, Chennai and the Asset Sale Committee would meet within 15 days to finalise the detailed terms of sale;

(e) If no bids are received in response to the advertisement or the bids received are not acceptable to the Asset Sale Committee, the company/promoters would be free to locate buyers and finalise the deal through mutual negotiation;

(f) the advertisement should be issued within 15 days in view of the eagerness

of the secured creditors;

(g) on receipt of the offers, the Asset Sale Committee would analyse the bids;

(h) the company would prepare a composite scheme including the rehabilitation of Binny Engineering Limited and submit the same to the Operating Agency (IDBI); and

(i) the amount of R.1.7 Crores would be paid to the workers out of Rs.20 crores lying in the 'No lien Account' with IDBI.

6.3. On an appeal preferred by the petitioner Company, the order of the BIFR dated 24.2.2003 was confirmed by an order dated 9.5.2003 of the AAIFR, holding that the petitioner company failed to bring the funds into the company for disbursement of the outstanding dues to the secured creditors, viz., financial institutions and banks for a long time, even though they are prepared to sacrifice the interest considerably. While confirming the order of the BIFR dated 24.2.2003, the AAIFR, making a reference to the decision of the Supreme Court in Chairman and Managing Director, SIPCOT, Madras-8, and Ors. Vs. Contromix Pvt. Ltd., rep. by its Director (Finance) Seetharaman, Madras and another, reported in JT 1995 (6) SC 283 as followed in Haryana Financial Corporation & another Vs. Jagadamba Oil Mills and another reported in JT 2002 (1) SC 482, observed that for sale of the public property, adequate publicity should be given and the best price should be secured by public actin. The AAIFR also found that the sale of 1260 grounds for a sum of Rs.60 crores is not reasonable, for want of permission of the Asset Sale Committee and the BIFR. Accordingly, the AAIFR dismissed the appeal preferred by the petitioner company holding that the petitioner company has no vested right to be given repeated opportunities to revive the petitioner sick industrial company, as the same would not serve any purpose. Hence, the writ petition.

V - IMPUGNED SCHEME

7.1. Before referring to the submissions made on behalf of the parties to the writ petition, it is necessary to make a cursory reference to the revised draft rehabilitation scheme in question.

7.2. The impugned scheme provides for splitting the petitioner Company, i.e., Binny Limited into two companies, i.e., Binny Limited and Binny Karnataka Limited invoking Section 394 of the Companies Act, 195 6, after payment of the basic dues, i.e., excluding interest on the basic dues, of the secured creditors and the workers, dividing the assets as follows:-

Sr. No.	Binny Limited (BL)	Binny Karnataka Ltd. (BKL)
1	To be owned, managed and controlled by the Ethurajan Group	To be owned, managed and controlled by the Co-promoters viz.,ETA Group
2		

BL would retain
B&C Mills at Perambur, Chennai
the Services Division including Cold Storage at Cochin.
Mining in Andhra Pradesh
Showrooms at Chennai, Calcutta
Regional Offices at Mumbai and Delhi
Land and buildings belonging to the company in the State of Tamil Nadu
and all current assets and liabilities and provisions and carried over losses relating to these divisions together with contributions brought in by the promoters.
the Bangalore Woolen, Cotton and Silk Mills together with the land relating to the Mills, Agraharam Road and Tank Bund property at Bangalore and all current assets and liabilities relating to the manufacturing operations.

Ownership of the land and buildings at Bangalore excepting Mill Area, Agraharam Road, and Tank Bund Road properties would be transferred to BKL at book value.

All the liabilities to institutions, State Bank of India, debenture holders and Government of India as on 31.3.2001 amounting to Rs.4588 lakhs would be frozen and transferred to Binny Karnataka Ltd. together with the contributions brought in by the co-promoters and losses relating to the above
3
Binny Engineering Ltd (BEL) would be under BL

BKL would not be engaged in any manufacturing activity.
7.3. As per the scheme, the contribution by the Promoters and the Co-promoters shall be made as follows:-

PROMOTERS CONTRIBUTION
The promoters have brought in Rs.2300 lakh in the year 1998-1999 and Rs.1300 lakh in March 2002 utilised towards part payment of workers' dues. A further sum of Rs.800 lakh is deposited in NLA account with IDBI on behalf of Ethurajan Group in November 2002. Out of this a sum of Rs.250 lakhs has been paid in May 2003 towards 1st instalment of interest as per the direction of Hon'ble High Court of Madras. The balance funds in No Lien Account would be 'lien' marked on sanction of Scheme by High Court of Madras. The promoters are also bringing Rs.755 lakhs to meet the balance interest payments to workers. Thus the total promoters contribution would work out to Rs.5155 lakhs towards the cost of the scheme. Of this it is proposed to convert a sum of Rs.2500 lakhs into redeemable preference share capital carrying divident rate so as to give a yield not higher than that of SBI's Prime lending rate, after considering tax benefits, if any. This divident would be payable only when the company starts earning profits.

CO-PROMOTERS CONTRIBUTION
A sum of Rs.1200 lakh is deposited in NLA Account with IDBI on behalf of ETA Group in November 2002. This NLA would be lien marked on sanction of scheme by High Court of Madras. The co-Promoters would also arrange to bring the balance of Rs.3887 lakhs equivalent to dues payable to first charge

holders and G.O.I. including interest therein for part financing the scheme.

On de-merger, the existing public share holding of the company (other than the promoters and co-promoters) will stand cancelled and fresh shares would be issued to all the existing public shareholders at the face value of Rs.5 each in Binny Limited and Binny Karnataka Ltd. Hence, for every one share of Rs.10/- each owned by the public shareholders of Binny Limited on the date of sanction of scheme, the said shareholder will get two new shares of face value of Rs.5 each - one share of BL and one share of BKL.

7.4. The promoters, namely Ethurajan Group will not have any shareholding in Binny Karnataka Ltd., and similarly, the co-promoter, namely Emirates Trading Agency Group (ETA Group) will not have any shareholding in Binny Limited. Thus, both Binny Limited and Binny Karnataka Limited would be owned, controlled and managed as separate legal entities, independent of each other. However, on a specific understanding that the Binny Karnataka Ltd. shall soon after the de-merger change the name of the Company and shall not use the word "BINNY". The name "BINNY" as well as its emblem/logo being a

registered mark of Binny Limited would not be used by Binny Karnataka Limited in any manner to avoid infringement of properties/intellectual rights/trade and patent rights.

7.5. The impugned scheme also provides for settlement of dues to the consortium banks, namely Indian Bank (respondent 8), Oriental Bank of Commerce (respondent 15), Bank of Baroda (respondent-7), Federal Bank Ltd. (respondent 28), which works out to Rs.6136 lakhs, and the same has to be arranged by the Promoters. The scheme also provides for settlement of dues to the financial institutions, namely IDBI (respondent 4), IFCI (respondent 5), ICICI (respondent 6), SBI (respondents 3 and 41), as well as Government of India (respondents 12 to 14 and 23) and debenture holders, which works out to Rs.4588 Lakhs, out of which they have already settled Rs.915 lakhs and the balance amount to be settled is Rs.3673 Lakhs, and the same has to be arranged by the co-promoter, crystalised as follows:-

Name of the Bank
Crystallised Amount as on 31.3.2001

Name of Institution/ Bank
Crystallised amount as on 31.3.2001
Already paid
Balance payable
Funds to be arranged by promoters

Funds to be arranged by co-promoters
Indian Bank
2993

IDBI
949

223
726
Oriental Bank of Commerce
1802

IFCI
125
29
96
Bank of Baroda
789

ICICI
241
57
184
Federal Bank Ltd.
552

Debenture-holders
73
17
56

SBI
2500
589
1911

Govt of India
700
0
700
Total (A)
6136

Total (B)
4588
915
3673
Total Crystallised amount (A+B) = 10724 Lakhs

The aforesaid crystallised amount of Rs.10024 Lakh (after adjusting Rs.915 lakhs which has already been appropriated) would carry simple interest @ 6% p.a. from April 1, 2001 till 31st July, 2003 estimated at Rs.1357 Lakh and

such interest would be paid by December 31, 2003."

7.6. A provision is made for 100% cash margin for outstanding bank guarantees as well as towards liabilities in respect of Binny Lorze Limited and the dues thereon payable to the Indian Bank, which reads as follows:-

"C. Providing 100% cash margin for outstanding bank guarantees
The company would provide 100% cash margin for the outstanding bank guarantees of Rs.236 lakh. After adjusting the existing available margin of Rs.115 lakhs, the balance margin of Rs.121 lakhs plus Rs.20 lakhs towards guarantee commission/bank charges would be brought in by 31st July 2003 or within 30 days from the sanction of the scheme by Hon'ble High Court of Madras, whichever is later. SBI, who had given the original guarantee for textiles, would takeover the entire liability of the bank guarantees on provision of 100% margin. Similarly, the guarantee liability with regard to Services Division will be with Consortium of Bankers.

D. Liability in respect of Binny Lorze Ltd.
Dues of Indian Bank in respect of M/s. Binny Lorze Ltd. aggregating Rs.3247 lakhs at after calculating interest @ 6% upto March 31, 2001 will be paid by Messrs. Binny Limited. Out of this, an amount of Rs.1 340 lakh would be met from sale of the machinery imported under the L/C and charged to Indian Bank and the balance Rs.1907 lakh would be treated as unsecured loan and repaid during 2003-04.

The company would provide Armenian Street property and link coner machinery as additional collateral security to cover entire dues amounting to Rs.3247 lakhs in respect of BLL to the satisfaction of Indian Bank.

7.7. The other most vital feature of the impugned scheme is relating to the provisions made for settlement of dues to the workers of B & C Mills, Chennai, which is provided as follows:-
Payment of dues of workers of B & C Mills, Chennai:

There are number of workers unions at the B & C Mills, Chennai. The Madras Labour Union (which represents more than 90% of the workers) and B & C Staff Union are the recognised unions. The company had, on March 28, 1998, entered into a settlement with the workers which envisaged VRS to majority of the workers. Accordingly, first instalment of VRS compensation amounting to Rs.2642 Lakhs was paid to the employees. The remaining dues of the workers were provided for payment in the sanctioned scheme of October/December 2001 as under:

(Rs. Lakh)
Total amount payable to workers
6775
Amount paid till October 21, 2001
2642
Balance amount payable as on October 31, 2001 which was provided for payment in the rehabilitation scheme sanctioned in October/December 2 001

4133
Less: Amounts paid after 31,2001
Released by OA as per BIFR order from Insurance Claim
Paid by the company in March, 2002 from their own sources

958

1950
2908
Balance payable to workers/Staff

Workers & Staff Dues 200
Management Staff dues 100
Arrears of Salary (Gross) 81
Dues of Co-op Society:
Workers (762) & HO Staff (82) 844

1225

In addition to the above, a sum of Rs.207 Lakhs as under is also payable towards arrears dues in respect of Bangalore Mills:
(Rs. Lakh)
PF Dues
150
Balance ESIC dues
10
Gratuity etc. to persons retired/resigned during 1996-2002
27
Arrears of salary etc
15
Management Staff salary
5
Total
207

The workers dues aggregating Rs.1432 lakhs pertaining to workers of both Chennai and Bangalore Units would be paid within 30 days from the date of sanction of the revised scheme by High Court of Madras or 31 st July, 2003 whichever is later along with secured creditors and banks.

The interest amount of VRS payable to workers (Chennai unit) works out to Rs.1005 Lakhs. A sum of Rs.250 Lakhs has already been paid in May 2003 out of the funds released from Escrow a/c by IDBI as per the direction of the Hon'ble High Court of Madras. The balance sum of Rs.755 Lakhs would be paid within 30 days of the sanctioning of the Scheme by High Court of Madras or 31st July 2003 which ever is later, along with secured creditors and banks. No interest is payable on the dues pertaining to Bangalore unit."

7.8. It is pertinent to observe that the basis of settlement of the dues to the workers is arrived at based on Clauses 3(B)(ii), 7(d)(iii) and 7(d)(iv) of the scheme sanctioned by the BIFR by proceedings dated 31.10.2001,

as modified by the proceedings dated 13.12.2001. Clauses 3(B)(ii), 7(d)(iii) and 7(d)(iv) read as follows:

"Clause 3(B)(ii):
As per agreement with the workers, an aggregate amount of Rs.6775 lakh was payable towards workers dues comprising VRS compensation, arrears of salaries and wages, PF, ESIC, etc. The Company has already made payment of Rs.2642 Lakhs. The balance liabilities amounting to Rs.4133 Lakhs; would now be discharged, within 90 days from the date of sanction of the scheme by BIFR. Interest calculated at 11.25% p.a. (SBI PLR) from September 15, 1998 till March 31,2001, along with interest from 27.5.1998 to 14.9.1998 to those employees who were not paid first installment, and from 27.5.1998 to 31.3.2001 in respect of those workers who had not been paid first installment, would be repayable in 4 equal annual installments, the first installment commencing from one year from the date of payment of principal. The company has clarified that interest is payable on the amount of Rs.3374 Lakhs only, representing the liabilities directly payable to workers and workers' Co-op society. No interest is payable on balance amount of Rs.759 Lakh which represents arrears of PF, ESIC and gratuity payable to management staff, etc. The totalbalance dues in respect of workers along with interest as above upto March 31, 2002 (cut off date), have been estimated at Rs.5138 Lakhs (inclusive of interest of Rs.40 Lakhs as stated above).

Clause 7(d)(iii):
Workmen occupying the company's quarters shall vacate all the quarters occupied by each one of them. With the handing over of clear vacant possession of each quarter, the company would simultaneously hand over the cheque in full settlement of each workman's dues as per the scheme. Apart from advising the workmen to vacate the quarter as per the manner detailed above, the Worker's Union will also cooperate with the management in all possible legal manner in taking vacant possession.

Clause 7(d)(iv):
About 398 workmen who have applied under VRS pursuant to the settlement dated 28.3.1998 have not been relieved by the management and have been retained. Of these 398 workmen, 281 workmen have already retired. Such of the above workmen who have already retired/will retire shall claim only 50% of their last drawn wages (reckoning it as on 15.6 .1996) from 28.3.1998 (the date of settlement) and their eligible gratuity till the date of their superannuation. They shall not claim any other benefit under the settlement dated 28.3.1998."

Clause 3(B)(ii) provides for settlement of dues under the Voluntary Retirement scheme entered under Section 12(3) of the Industrial Disputes Act with interest for the belated payment which shall be paid in four annual installments. Clause 7(d)(iii) provides for payment of cheques in full settlement to the workers and simultaneous handing over of the quarters by the workers concerned to the petitioner company. Clause 7(d)(iv) provides for settlement of the terminal benefits to the 398 workmen who have applied for Voluntary Retirement, but, have not been relieved by the petitioner company and, out of whom, 281 workmen have already retired. The above terms were incorporated in the scheme sanctioned by the BIFR by proceedings dated

31.10.2001, as modified by proceedings dated 13.12.2001 only after due deliberation and agreement of the workers Union. The interest already paid by the management and received by the workers, namely Rs.250 Lakhs till May, 2003 itself is in consonance with Clause 3(B)(ii) of the scheme sanctioned by the BIFR on 31.10.2001 as modified by proceedings dated 1 3.12.2001.

7.9. The dues payable to the unsecured trade creditors are proposed to be settled as follows:
Unsecured Trade Creditors:
The outstanding amount with respect to unsecured trade creditors as per company's books of accounts is Rs.1930 lakhs as on March 31, 2003. These creditors would be paid during the normal course of business, depending upon further supplies and the same is built in the working capital."

7.10. In order to tap the source for settlement of dues payable to the consortium banks under one time settlement, the scheme provides for sale of 1260 grounds of land for a consideration to the tune of Rs.6210 Lakhs making a provision as follows:-
Sale of 1260 Grounds for a consideration of Rs.6210 Lakhs:
Binny Limited currently owns a wholly owned subsidiary viz. Binny Read Estate and Asset Developers (Madras) Ltd. (BREAD), it is proposed to transfer 1260 grounds of land of the company loacted at Perambur to BREAD. Thereafter, BREAD would be acquired by Shri.G.H.Reddy, promoter of Dyna Hotels Limited, Shri G.V.Prasad, Vice Chairman and CEO of Dr.Reddy laboratories and Shri K.S.Aghoram, Shri K.S.Sursh and Shri K.S.Ganesh, Directors of SSI Limited in their individual capacities as per their offer letter dated 12th June, 2003 for an amount of Rs.62 10 Lakhs. The terms and conditions would be as prescribed in the advertisement dated 23.5.2003.

7.11. After settling the dues by way of one time settlement to the secured creditors, namely the Financial institutions and the consortium banks as well as the Workers, as provided under the scheme referred to above, there shall be a balance of Rs.345 Lakhs out of the source of funds covered under the scheme after discharging the liabilities as stated hereunder:-
(Rs. Lakhs)
SOURCES:

Promoters Contribution already brought in
800

Interest already paid to workers
250

Funds available in Escrow amount with IDBI

550
Promoters Contribution for interest payment to workers

755
Co-Promoters contribution - already brought

- to be brought
1200
3388

4588
Funds available in Escrow account with IDBI

167
Real Estate proceeds out of the sale as per orders of Hon'ble High Court-Madras

6210
Interest receivable from Insurance & IDBI

512
TOTAL

12782
APPLICATION:

OTS to institutions
4588

LESS Amount appropriated
915
3673
OTS to Banks

6136
Workers Dues (Chennai & Bangalore)

1432
Interest to Workers (3 instalments)

755
Margin money for guarantees payable to banks

141
Capital Expenditure

140
Property tax

75
Contingent Expenses

85
TOTAL

12437

SURPLUS
345

7.12. After discharging the secured loans to the financial institutions and the consortium banks as well as the workmen, the Company proposes to revive its activities as follows:
Capital Expenditure:
i. Binny Limited would be shifting the textile plant to a new location at Kancheepuram District and run 170 looms and a processing house. The compny was producing 80,000 metres of single width cloth before closure. It is now envisaged to produce 40,000 metres of double width cloth, which is equivalent to 80,000 metres of cloth produced earlier. The company will also run 90 piconol looms and 66 silk looms either in the same location or at a new location at Bangalore.

ii. The company has easy access to yarn from its sister concern viz., Thirumagal Mills Ltd. (TML). The company would enter into an agreement with TML for the regular supply of yarn on conversion and continuous basis. The company has already commenced Container Freight Station Service activities in May, 2002.

iii. It is proposed to undertake weaving in 2004 and get the processing done outside. In 2004-2005, the company would infuse funds for establishing its own processing house. The company also proposes to invest Rs.221 Lakhs for its Bangalore operations. Accordingly, the requirement of capital expenditure has been estimated at Rs.2321 Lakh (weaving section Rs.1236 Lakh, processing Rs.1085 lakh) for Chennai operations. Besides this, an expenditure of Rs.300 lakhs (140 lakhs already incurred) has been estimated/incurred for the Container Freight Station (CFS) services."

(VI) - SUBMISSIONS
(A) - SUBMISSIONS MADE ON BEHALF OF THE PETITIONER COMPANY

8.1. Mr.R.Krishnamurthy, learned senior counsel appearing for the petitioner company, contends that the earlier agreement between the petitioner company and the Carnatic Real Estate Ltd., for sale of 1260 grounds for sum of Rs.75 crores was also subject to the approval of the BIFR. Even though the said proposal did not fructify, it is relevant to observe that the Asset Sale Committee, itself, in the meeting held on 26.6.2002 considered that Rs.77 Crores would be a reasonable price for the sale of 1260 grounds.

8.2. According to Mr.R.Krishnamurthy, learned senior counsel, the earlier sale consideration of Rs.75 Crores by Carnatic Real Estate Ltd., was sought to be made within 18 months from the sanction of the scheme, and the present offer namely, a sum of Rs.60 crores for the property of an extent of 1260 grounds is agreed to be made in 15 days from the date of sanction of the scheme, which would help the petitioner company to discharge their dues in one time settlement to the secured creditors as well as the workers, and hence, it is contended that the refusal to sanction the present proposal as well as sale of 1260 grounds of land for Rs.60 Crores alleging the same is not transparent

is arbitrary and unreasonable.

8.3. Mr.R.Krishnamurthy, learned senior counsel, points out that the property sought to be disposed off by the petitioner company is not a public property, but it is a private property of the petitioner company and therefore, the decision of the Supreme Court in Chairman and Managing Director, SIPCOT, Madras-8, and Ors. Vs. Contromix Pvt. Ltd., rep. by its Director (Finance) Seetharaman, Madras and another, reported in JT 1995 (6) SC 283, as followed in Haryana Financial Corporation & another Vs. Jagadamba Oil Mills and another reported in JT 2002 (1) SC 482 (cited supra), referred by the AAIFR is not relevant to the issue.

8.4. It is also brought to the notice of this Court that by proceedings dated 1.7.2002, the BIFR disbanded the Asset Sale Committee (ASC) and restrained the petitioner company from proceeding further in any manner with regard to sale/development of properties. However, by proceedings dated 28.10.2002, the BIFR directed the company/promoters/co-promoters to bring in Rs.20 crores transferred in interest bearing "no-lien account" with the Operating Agency (IDBI) in the name of "Binny Limited" and to give a letter stating that the amount would become "lien" marked deposit in case a scheme was sanctioned and also permit the secured creditors to take final view on the assets/ properties and direct the company to allow the bankers or other secured creditors to inspect the property for satisfying themselves and the assets sold/amounts received etc., which would mean the Operating Agency (IDBI) to submit a clear report in this regard within 30 days from 28.10 .2002, in any event before 30.11.2002. In view of the disbandment of the Asset Sale Committee, the petitioner company can bring the proposal for sale of 1260 grounds to bring in the funds to discharge the dues to the secured creditors, of course, which shall be subject to the approval of the Operating Agency and sanction of BIFR. Therefore, the present proposal brought in by the petitioner company for sale of 1260 grounds would not, in any way, be contrary to the directions of the BIFR or the provisions of the Act.

8.5. Mr.R.Krishnamurthy, learned Senior Counsel submits that even though advertisement was made as per the orders of this Court dated 13.5.2003 in the present writ petition for the sale of 1260 grounds, the petitioner could get offer for only Rs.62.10 crores.

8.6. The attention of this Court is also invited to the opinion of the secured creditors that M/s.Binny Engineering Limited, should be de-linked, as it requires techno - economic viable study, which the petitioner is willing to conduct in thirty days from the sanction of the present scheme.

8.7. It was further agreed that the promoter and co-promoters are willing to bring in Rs.7.55 crores and Rs.34 crores respectively, immediately, apart from Rs.158 crores already brought in by the promoters and co-promoters. Thus, the petitioner company would satisfy their own source of Rs.200 crores to run the scheme viable. Hence, the impugned scheme is fully tied up in respect of the settlements of the secured creditors, viz., financial institutions, banks and debenture holders, as well as for settlement of dues payable to the workers.

8.8. The learned Senior Counsel also invited my attention to the shifting of a textile unit to a new location over an extent of not less than 50 acres in Kancheepuram District, which would function with 170 looms with a processing house. The capacity of the textile unit would be 40,000 metres of double width cloth, which is equivalent to 80,000 metres of cloth produced earlier. The company also would run 90 piconol loom and 66 silk looms either in the same location or at a new location at Bangalore, to safeguard the interest of workers and secured creditors.

(B) - SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS
(i) - ON BEHALF OF SECURED CREDITORS -
FINANCIAL INSTITUTIONS & BANKS

9.1. Mr.M.Balachandar, learned counsel appearing for respondents 3 and 41, viz., State Bank of India, invited my attention to the counter affidavit filed on behalf of respondents 3 and 41, for the sale of land of the petitioner, viz., 1260 grounds at Perambur, Chennai, for a sum of Rs.62.10 crores as per the bid offered pursuant to the advertisement of the Operating Agency (IDBI). The relevant portion of the affidavit filed on behalf of respondents 3 and 41, reads as follows:
"...4. The state Bank of India/this respondent, considered the said scheme and the State Bank of India have no objection to ordering the said scheme by approving the sale of the land, as per the advertisement of the IDBI and for approval of the modified revised draft rehabilitation scheme..."

9.2. Mr.P.L.Narayanan, learned counsel appearing for respondents 4 and 5, viz., Operating Agency (IDBI) and IFCI, referred the averments made in the counter affidavit filed on behalf of respondents 4 and 5. The relevant portion is extracted here under:-
"... 2(iv) Pursuant to such advertisement, inspection of the property was made by 9 parties, however, only one offer was received until 1 2.06.2003. The offer so received was from Shri.K.S.Aghoram, Director, S.S.I. Ltd., and Shri G.Harishchandra Reddy, Managing Director, M/ s.G.H.Reddy and Associates and it was accompanied by Demand Drafts aggregating Rs.6 crores, as per the conditions stipulated in the advertisement.

At the time of opening of the offer, to ensure transparency, all the secured creditors and the bidder were called to be present and the offer was opened in their presence. The offer made by the aforesaid persons was for a sum of Rs.62.10 crores, higher than the upset price of Rs.60 crores as fixed by this Hon'ble Court and indicated in the advertisement. The said parties were also agreeable to make payment of the entire balance amount within 15 days of receipt of acceptance. All secured creditors found the offer valid and agreed to accept the offer.

This respondent further submits that the charge on the properties at Chennai and Bangalore, proposed to be sold for raising the OTS amount will be released on receipt of the sale proceeds in the No Lien Account with the respondent and the charge on the remaining properties, except properties worth double the amount of interest payable on the OTS amount, would be released

after the entire crystallised liabilities are fully discharged. ... "

9.3. Mr.Murali, appearing for respondents 6 and 28, viz., ICICI Bank and Federal Bank Ltd., respectively, invited my attention to the counter affidavit filed on behalf of respondents 6 and 28. The relevant portion is extracted here under:
"... The petitioner has also informed the Hon'ble Court that as per the directions of this Hon'ble Court, IDBI, Operating Agency, issued an advertisement inviting offers for sale of the property belonging to the petitioner company by 12.6.2003. The Operating Agency has also informed that there is only one offer received in response to the advertisement which was opened on 16.6.2003 at the office of IDBI at Chennai. The offer for sale of 1260 grounds of land at Chennai has been received from one Mr.G.H.Reddy, promotor of Dyna Hotels, and Sri.K.S.Agoram, Director, SSI Ltd. in their individual capacities and they offered to purpose the same for a sale considerationof Rs.6210 lakhs. Based on the said offer, the petitioner co mpany has given a modified draft Rehabilitation Scheme in terms of which the dues of this respondent will be cleared.
The sixth respondent had considered the revised rehabilitation scheme and have no objection to order the said scheme by approving the sale of the land, as per the advertisement of IDBI (Operating Agency) and for approval of the modified revised draft rehabilitation scheme as envisaged by the petitioner."

9.4. Mr.Ramalingam, learned counsel appearing for the seventh respondent, referred to the affidavit filed on behalf of the seventh respondent, wherein it is stated as follows:

"... This respondent does not have any objection to approve the proposed sale of immovable property as put forth by the petitioner and in pursuance of the sale advertised by M/s.IDBI, the Operating Agency, to Mr.K.S.Aghoram and Mr.G.Harichandra Reddy for a payment of Rs.6210 lakhs. I further submit that this respondent Bank has no objection to the rehabilitation scheme submitted by the petitioner subject to that there shall not be any further sacrifice by this respondent in the dues payable to us. We

are agreeable to receive Rs.789 lakhs with interest at the rate of 6% per annum on the said amount from 01.04.20 01 till the date of payment on approval of the scheme by this Hon' ble Court..."

9.5. Mr.Somayaji, learned Senior Counsel appearing for the eighth respondent, viz., Indian Bank, brought to my notice the averments stated in the counter affidavit filed on behalf of eighth respondent. The relevant portion is extracted hereunder:

"... The BIFR by its order dated 24.02.2003 framed composite scheme agreeing to accept the proposal for sale of land as per the direction contained in para 25.5 of the order dated 24.02.2003, as against which the petitioner filed an appeal under Section 25 of the SIC Act. In the order dated 09.05.2003, the Appellate Authority, the 1st respondent has confirmed the order of BIFR by ordering sale of the land by inviting tenders through advertisement. The

petitioner company, has given a letter dated 18.06.2003 that as per the directions of the Hon'ble Court, the IDBI the Operating Agency issued an advertisement inviting offers for sale of the property belonging to the company. The offers were to be received on or before 12.06.2003. The company has also stated that only one offer was received in response to the advertisement which was opened on 16.06.2003 at IDBI office Chennai. The offer for sale of 1260 grounds at the Chennai has been received from one Mr.G.H.Reddy, Promotor of Dyna Hotels and from Mr.K.S.Agora, Director SSI Ltd., in their individual capacities. The offer quoted is Rs.6210 lacs. The petitioner has given their offer for one time settlement with the Indian Bank based on the aforesaid offer of payment of 6210 lacs for the purchase of land and building situated at Perambur, Chennai. The respondent bank has considered the offer of the petitioner company and agreed to accept a sum of Rs.2993 lacs towards full and final settlement of the dues in respect of the account M/s. Binny Ltd., and had given a letter to the Company on 24.6.2003 subject to approval of the modified/revised/rehabilitation scheme to be sanctioned by this Hon'ble Court or by the competent authority. This respondent bank is eager to recover the amount of Rs.2993 lacs within the stipulated period and therefore is equally interested in the approval of the scheme by confirmation of the sale of the land of the petitioner with the permission of this Hon'ble Court Court as suggested by the petitioner company..."

9.6. Mr.Vasan, learned counsel appearing for 15th respondent, viz., Oriental Bank of Commerce, brought to my notice the averments stated in the counter affidavit filed by 15th respondent, of which, the relevant portion is extracted hereunder:
" ...The offer for sale of 1260 grounds at Chennai has been received from Sh.G.H.Reddy, promoter of Dyna Hotels, and Sri.K.S.Agora, Director, SSI Ltd., in their individual capacities and the sale consideration is Rs.6210 lacs. Based on the said offer, the petitioner company has given modified revised draft rehabilitation scheme along with their letter, dated 18.6.2003, the modified scheme contains the liability to be paid to the Oriental Bank of Commerce and mode of repayment suggested by the said scheme. The Oriental Bank of Commerce, this respondent considered the said scheme and the Oriental Bank of Commerce have no objections to ordering the said scheme by approving the sale of the land, as per the advertisement of the IDBI and for approval of the modified revised draft rehabilitation scheme, vide the letter, dated 18.6.2003 of the petitioner...."

(ii) - ON BEHALF OF CENTRAL & STATE GOVERNMENT & STATUTORY AUTHORITIES

9.7. Mr.K.Kumar, learned Additional Central Government Standing Counsel appearing for respondents 12 to 14, viz., Ministry of Textiles, Ministry of Commerce and Ministry of Finance, while contending that the sale price of Rs.60 crores for 1260 grounds at Perambur, Chennai, is lower than the value viz., Rs.75 crores, which was offered by M/s. Carnatic Real Estate Limited (CREL), and also below to Rs.77 crores recommended by Asset Sale Committee in the meeting held on 26.6.2002, is not disputing the fact that CREL was willing to pay Rs.75 crores over a period of 18 months from the date of sanction of the scheme by the BIFR, as referred to above. However,

Mr.K.Kumar, learned Additional Central Government Standing counsel is not disputing the fact that the present offer for a sum of Rs.62.10 crores by Shri.Reddy and others is the only single offer to the advertisement made by the Operating Agency (IDBI) for the sale of the said 1260 grounds of land, as per the orders of this Court dated 13.5.2003 in the present writ petition, and that there is no other response to the said advertisement.

9.8. Mr.V.K.Vijayaraghavan, learned counsel appearing for the 19th respondent viz., Employees State Insurance Corporation, submits that the petitioner company would be liable to pay the statutory liabilities and whatever waiver the petitioner is entitled to with respect to the interest, penalty, etc. will be considered by the 19th respondent in accordance with law.

9.9. Mr.G.Vasudevan, learned counsel appearing for the 20th respondent viz., Tamil Nadu Electricity Board, has made an endorsement to the effect that the 20th respondent - Board agrees for the scheme upon receipt of the amount due to the Electricity Board.

9.10. Mr.M.S.Palanisamy, learned Additional Government Pleader appearing for respondents 22 and 44, invited my attention to the counter affidavit filed on behalf of 22nd and 44th respondents viz., B&C Mills Employees Cooperative Society, and Binny's Engineering Works Employees Co-operative Credit Society Ltd., respectively, that they have no objection for the approval of the scheme, provided the petitioner settles the amount recovered from the employees towards principal and interest and that they have no objection for the petitioner to seek waiver of interest, if the same is permissible in law.

9.11. Mr.V.G.Sureshkumar, learned counsel appearing for the 24th respondent, viz., Ministry of Railways, submits that except to demand the outstanding due payable by the petitioner to the Railways to the tune of Rs.6,69,639/-, this respondent has no objection for the approval of the scheme.

9.12. Mr.V.Vibhishanan, learned counsel appearing for 49th respondent, viz., Employees Provident Fund Organisation, submits that the 49 th respondent is interested only to collect the arrears towards the employees provident fund and the request of the petitioner Company for waiver of any liability shall be considered in accordance with law and that they have no objection for the approval of the scheme.

9.13. Mr.Pushya Sitaraman, learned Standing Counsel appearing for respondents 36 and 37, viz., Income Tax Department, submits that except to recover the outstanding dues from the petitioner, respondents 36 and 37 have no objection for the sanction of the scheme. That apart, inviting my attention to the letter dated 25.2.2003 of the Directorate of Income-Tax (Recovery), it is contended on behalf of the 36th respondent that they have no objection to consider the request of the petitioner for any of the reliefs envisaged from the Income-Tax Department.

(iii) - SUBMISSIONS MADE ON BEHALF OF THE WORKERS
9.14.1. Mr.N.G.R.Prasad, learned counsel appearing for the workers, respondents 16 to 18, 27, 34, 42 and 56 to 86, claims that a sum of Rs.11.30 Crores has to be paid to the workers as follows:

(i) Interest due on delayed payment of VRS Compensation
Rs.7.55 Crores
(ii) Gratuity to Binny Ltd. Employees in Chennai
Rs.2.00 Crores
(iii) Wages for the period actually worked 1.3.1997 to 7.7.1997 for the B&C Mills Workmen (about 1700 in numbers)
Rs.1.75 Crores
TOTAL
Rs.11.30 Crores

9.14.2. In response to the above claim, Mr.R.Krishnamurthy, learned Senior counsel for the petitioner fairly submits that the petitioner is willing to settle Rs.7.55 Crores towards the interest on delayed payment of VRS compensation and Rs.2 Crores towards the gratuity. But, however, the liability of the petitioner towards the alleged wages for the period actually worked, viz., from 1.3.1997 to 7.7.1997, for the B&C Mills Workmen, is disputed as the management already paid a sum of Rs.6 Crores towards wages, ration and provision to the workmen during the period of closure and both the Management and the Workmen agreed as per clause 5 of the settlement dated 28.3.1998 entered under Section 12(3) of the Industrial Disputes Act that the management would not recover the said Rs.6 Crores from the workmen and the workmen also would not press the demand that they should be paid wages for the said closure period, viz., 1.3.1997 to 7.7.1997. However, Mr.R. Krishnamurthy, learned senior counsel submits that in any event since the issue with respect to the said claim of Rs.1.75 Crores towards the alleged wages for the period from 1.3.1997 to 7.7.1997 is pending before the Joint Labour Commissioner (Conciliation), Chennai, the Management and the workers would abide by any decision arrived therein.

9.14.3. Mr.N.G.R.Prasad, learned counsel contending on behalf of the respondents 18, 27 and 34 representing the Binny Beach Engineering Workers Union, claims that the wages due to the workers for the months of May, June and July, 2003 should be paid to them and the same was readily accepted by Mr.R.Krishnamurthy, learned senior counsel for the petitioner.

9.14.4. With respect to the claims made by the workmen that are still pending before this Court as well as the Labour Court, in,
(i) W.A.No.640, 641/1999 on the file of this Hon'ble Court between Workmen of Binny Beach Engineering Workers Union and the Management of Binny Limited;
(ii) W.A.No.2328/2002 and W.A.No.717/2003 on the file of this Hon' ble Court between workmen of Binny Beach Engineering Workers Union and the Management of Binny Limited;
(iii) I.D.No.24/86 & 11/88 on the file of the Industrial Tribunal, Chennai between Binny Beach Engineering workers Union and the Management of Binny Limited;
(iv) I.D.Nos.376/86, 11/92, 66/95, 275 to 278/95, 401/97, 508 to 511 /97,

between the dismissed workers and the Management are pending before the Labour Court, Chennai; and
(v) I.D.No.376/95 - filed by K.Karunakaran, dismissed employee allowed by the II Additional Labout Court, Chennai dt.25.04.2003. Award yet to be implemented.

it was agreed by Mr.R.Krishnamurthy, learned senior counsel as well as Mr.N.G.R.Prasad, learned counsel for the workmen agreed that the parties shall work out their rights subject to the decision in the above cases.

9.14.5. Respondents 42, 56 to 86-management staff, whose services were terminated by the petitioner Company, seek reinstatement with backwages or alternatively Voluntary Retirement Scheme compensation @ Rs.1.25 Lakhs per worker, which works out to Rs.1.25 x 37 = 46.25 Lakhs. Concededly, even though the order of termination of the respondents 42, 56 to 86 were set aside by this Court by order dated 2.12.1997 in W.P.No.11862 of 1996, on appeal, the same is pending before the Apex Court in Civil Appeal No.1976 of 1998, and therefore, Mr.R. Krishnamurthy, learned senior counsel and Mr.N.G.R.Prasad, learned counsel for the workmen agree that the petitioner management would settle the dues to the workmen, if any, subject to the decision of the Apex Court in the the Civil Appeal, referred above. In precise, Mr.N.G.R. Prasad, learned counsel appearing for the respondents 16 to 18, 27, 34, 42 and 56 to 86 agrees for the sanction of the impugned scheme with an earnest claim that some funds may be reserved to meet the claims of the workmen in such of their pending cases.

9.15.1. Mr.S.Jegadeeshwaran, learned counsel appearing for the respondents 43 and 45 submits that the 43rd respondent is one among the 39 workers who did not offer for voluntary retirement but wanted to continue in service. Concededly, the 43rd respondent has now been reinstated in Binny Engineering Limited with effect from 17.2.2003 and he has also filed a claim petition C.P.No.72 of 2000 before the Principal Labour Court, Chennai for backwages from 15.6.1996 till he was reinstated on 17.2.2003. However, an endorsement was made by Mr.S. Jegadeeshwaran, learned counsel appearing on behalf of the 43rd respondent to the effect that "the scheme for sale of 1260 grounds is accepted", provided the 43rd respondent is paid his wages for last three months of his employment at Binny Engineering Limited, of course, without prejudice to his right in the Claim Petition C.P.No.72 of 2000 pending before he Principal Labour Court, Chennai. Mr.R.Krishnamurthy, learned senior counsel for the petitioner company agrees that the company will settle the dues to the 43rd respondent as per the decision in the said claim petition C.P.No.72 of 2000 and shall also pay wages for three months to the 43rd respondent for his employment in Binny Engineering Limited.

9.15.2. Mr.S.Jegadeeshwaran, learned counsel appearing for the 45 th respondent submits that though the 45th respondent had opted for Voluntary retirement and the same was accepted, pursuant to which the terminal benefits were arrived at, the 45th respondent did not receive the same claiming that he is entitled for Voluntary retirement compensation and the terminal benefits with accrued interest thereon as per the settlement dated 28.3.1998 entered under Section 12(3) of the Industrial Disputes Act. But, Mr.R.Krishnamurthy,

learned senior counsel appearing for the petitioner company submits that the 45th respondent is not entitled for interest on the voluntary retirement compensation and terminal benefits as he continued to be in occupation of his quarters in spite of the acceptance of the voluntary retirement, without paying rent for the same. Admittedly, a claim petition C.P.No.4 43 of 2000 on the file of the Labour Court, Chennai, preferred by the 45th respondent claiming voluntary retirement compensation and terminal benefits with accrued interest is still pending. Mr.R. Krishnamurthy, learned senior counsel also brought to my notice that the claim of the 45th respondent with respect to his right to continue in the quarters was already rejected by this Court by order dated 8.3.2002 in W.P.No.23404 of 2001, referred to above. In any event, Mr.S. Jegadeeshwaran, learned counsel for the 45th respondent had made an endorsement that the scheme for the sale of 1260 grounds is accepted, however, without prejudice to the right of the 45th respondent in C.P.No.443 of 2000.

9.16. Mr.G.Purushothaman, learned counsel appearing on behalf of the 47th respondent contends that the members of the 47th respondent Union are entitled for terminal benefits as per the settlement dated 28.3.1998 entered under Section 12(3) of the Industrial Disputes Act. Mr.R.Krishnamurthy, learned senior counsel for the petitioner inviting my attention to Clauses 3(B)(ii), 7(d)(iii) and 7(d)(iv) of the scheme sanctioned by the BIFR in its proceedings dated 31.10.2001, as modified by proceedings dated 13.12.2001, submits that the petitioner company is willing to settle the dues to the petitioner as per the settlement dated 28.3.1998 in the light of the said Clauses 3(B)(ii), 7(d)(iii) and 7(d)(iv) of the scheme sanctioned by the BIFR, and that in any event, since the 47th respondent had also raised the above issue before the Joint Commissioner (Conciliation) claiming wages even for the closure period, the petitioner company is willing to abide by the decision arrived thereunder.

9.17. Mr.R.Neelakandan, learned counsel appearing for the respondent 54 submitted that the petitioner company should settle all the dues towards the gratuity, cooperative arrears and the interest for the delayed payment on VRS, for which Mr.R.Krishnamurthy, learned senior counsel appearing for the respondents pointed out that the provisions are already made in the impugned scheme.

9.18. Mr.K.M.Ramesh, learned counsel for the 55th respondent, contends that out of 10.25 Crores provided for payment of dues to the workers and employees of the Bangalore Mill, a sum of Rs.8.18 Crores has already been paid and the balance amount of Rs.2.07 Crores has to be provided in the present rehabilitation scheme. In response, Mr.R. Krishnamurthy, learned senior counsel fairly agrees to settle Rs.2.07 Crores to the workers working in the Bangalore Woolen and Cotton Mills represented by the 55th respondent.

9.19. Of course, two employees, namely Shaik Mahboob and A. Nagarajan, working in the Management proposed to implead themselves in the above writ petition in W.P.M.P.No.25551 of 2003. However, pending the above W.P.M.P., the said two workers along with other nine workers have entered into a compromise with the petitioner management on 22.8.2 003 agreeing to settle the dues and to vacate the quarters as stated therein, which reads as follows:

"1. The petitioners herein had filed a petition to implead themselves as representatives of 11 Management Staff, who have filed Computation Petitions before the Labour Court at Chennai as listed below:-

Names	Case Nos
A.Nagarajan	CP No.594/01
Shaik Mehboob	CP No.408/01
A.K.Thiyagarajan	CP No.405/01
P.Bharathi	CP No.406/01
R.Sekar	CP No.407/01
R.Gouse Ahmed	CP No.409/01
S.Sekar	CP No.410/01
Francis Vincent	CP No.411/01
K.Thiyagarajan	CP No.412/01
Thomas Nirmal Manohar	CP No.479/01
V.G.Palani	CP No.480/01

2. The parties have now opted for an out of Court settlement with the Management of M/s.Binny Limited, on the following terms and conditions:

a) that a total sum of Rs.33,00,000/- (Rupees thirty three lakhs only) in all to be paid to the 11 management staff mentioned above, towards full and final settlement of the dues, towards arrears of salary, gratuity, etc., i.e., excluding provident fund.

b) The 11 members shall receive the said dues and shall simultaneously hand over vacant possession of the quarters which seven of them occupy.

3. The provident fund shall be paid to each individual in accordance with their entitlement by the Board of Trustees. M/s.Binny Work People Provident Fund Trust. The Management agrees to have the same disbursed to the concerned employees within a period of two weeks, subjects to the incumbents handing over necessary letter of resignation simultaneously.

4. The payment of Rs.33,00,000/- (Rupees thirty three lakhs only) as aforesaid shall be made within a period of 2 weeks or the date of surrender of the quarters of the staff, whichever is later, subject to a maximum period of three months.

5. In the event of any of the parties defaults in complying with any one or more of the terms stated herein above, the other party would be at liberty to work out their rights independently and this arrangement will stand revoked. All the above 11 management staff agree to withdraw the computation

petitions stated above on receipt of the entire amount as mentioned above.

6. It is agreed by both the parties that the payment for the 11 Management Staff mentioned above will be paid simultaneously on handing over vacant possession of the quarters occupied by te 7 of the above management staff.

7. In view of the above arrangement, the above WPMP No.25551 of 2003 is not pressed by the petitioners."
In view of the above joint memorandum dated 22.8.2003, the above WPMP No.25551 of 2003 is dismissed.

9.20. Even though one MAA Communication Bozell Ltd, Chennai proposed to implead themselves as proposed respondent in the above writ petition by way of W.P.M.P.No.27238 of 2003, claiming as an unsecured creditor for the settlement of the dues, Ms.Anna Mathew, appearing for the proposed respondent withdrew the said W.P.M.P.No.27238 of 2003 as not pressed on 22.8.2003.

(iv) - SUBMISSIONS MADE ON BEHALF OF THE CO-PROMOTER:

9.21. Mr.V.Ayyadurai, learned counsel for the 46th respondent, Copromoter had filed an affidavit agreeing to bring in 34 Crores within three weeks from the sanction of the scheme. Relevant portion of the affidavit reads as follows:

"... 5. I submit that since we have already been undertaken to bring in a further amount of Rs.34 crores to discharge the liabilities of the company on sanctioning of the scheme, we have already tied-up with M/s.ICICI Bank who have agreed to advance a loan of Rs.38 Crores to be brought into the petitioner company, the Binny Limited by us for discharging its liabilities towards secured creditors. In any event we are prepared to bring in the said amount of Rs.34 crores within three weeks from the sanctioning of the scheme by the Hon'ble High Court."

(v) - SUBMISSIONS MADE ON BEHALF OF THE PROPOSED PURCHSER

9.28. Mr.T.K.Bhaskar, learned counsel appearing for the 87th respondent, proposed buyer, invited my attention to the affidavit filed on their behalf. The relevant portion of which reads as follows:
"1. I am filing this affidavit on behalf of myself, Sri K.S.Ganesh, Sri Kalpathi S.Suresh, Dr.G.Harishchandra Reddy and Sri G.V.Prasad. I submit that we have made a joint bid towards the purchase of 1260 grounds belonging to the petitioner company located at Perambur pursuant to the bids invited by M/s.IDBI, the operating agency of the petitioner company vide its advertisement dated 23.5.2003 published in Economic Times newspaper.

2. I submit that the operating agency issued the said advertisement inviting fresh bids at the request of the petitioner pursuant to the order passed by this Hon'ble Court dated 13.5.2003. I submit that under the terms of the

advertisement, a reserve price of Rs.60 crores was fixed and all bidders were required to deposit 10% of the reserve price i.e., 6 crores with M/s.IDBI Bank. I submit that along with out offer we also deposited 6 crores with M/s.IDBI in a no lien account.

3. I submit that the advertisement clearly stipulates that the acceptance of bid would be subject to the order of this Hon'ble Court and the balance payment would have to be made within 15 days from the date of such acceptance. I submit that the modus operandi for effecting such transfer was also set out in the advertisement in terms of which the property would be transferred to a wholly owned subsidiary of the petitioner company under the name M/s.Binny Real Estate and Asset Developers (Madras) Ltd. (BREAD). Once the transfer of the assets is effected to the wholly owned subsidiary, the shares of the wholly owned subsidiary would be transferred to the purchaser against which the amount would be released.

4. I submit that we have made an offer to the tune of Rs.62.10 crores on the terms and conditions set out in the advertisement. I submit that we are filing this affidavit pursuant to a direction by this Hon'ble Court on 23.7.2003 requiring us to inform this Hon'ble Court the terms of our proposal for making the balance payment.

5. I submit that as stated earlier, we have already deposited Rs.6 crores in a no lien and no interest bearing account with M/s.IDBI. I submit that we are ready to comply with the terms of advertisement that require us to make the balance payment within 15 days from the date of acceptance of the bid by an order of this Hon'ble Court and the issuance of appropriate directions towards the transfer of property to BREAD, free of encumbrance, and the sale of the shares of BREAD as contemplated in the advertisement.

6. I submit that for the purpose of making the balance payment we have tied up financing arrangement with Union Bank of India, Industrial Finance Branch who have agreed to sanction and disburse a total amount of Rs.50 crores. Once the property is transferred to BREAD, against the transfer of the entire shares to BREAD to us, the loan amount of Rs.50 crores would be disbursed directly by Union Bank of India to the no lien account of the operating agency. Simultaneously with such disbursement, the original title deeds in relation to the property would be handed over by such of the secured creditors in whose custody the documents of title are deposited to M/s.Union Bank of India, towards the creation of equitable mortgage by us by way of deposit of title deeds to secure the disbursement of the loan.

..
8. I submit that thus an aggregate amount of Rs.62.10 crores would be deposited in the no lien account within 15 days of the acceptance of our bids by this Hon'ble Court subject to the property being transferred to BREAD, free of encumbrances and charges including statutory charges and against the handing over of the title deeds to M/s.Union Bank of India as set out above."

(VII) - DECISION AND DIRECTION

10.1. It is trite law that the judicial review is a basic feature of the Constitution and therefore, the decision of the statutory authorities like BIFR and AAIFR are subject to the writ jurisdiction under Article 226 of the Constitution of India.

10.2. I have already dealt in detail the scope and object of the SIC Act and have referred to the various provisions of the same. The powers, much less the discretionary powers, and obligations conferred on the authorities, namely BIFR and AAIFR as well as the procedure to be followed in sanctioning the scheme for the revival and rehabilitation of the sick industrial company were also discussed above.

10.3. Under the scheme of the Act, the winding up of the sick industrial company should be a last resort, as the winding up of the sick industrial company would have serious repercussions both economically and socially. The winding up it means loss of production, reduced availability of goods and service to the consumers, loss of employment and employment opportunities, loss of revenue like tax and duties to the Government and local authorities, non recovery of loans and advances made by lenders like financial institutions and banks, that constitutes the "public interest", enshrined in the SIC Act. The expression "public interest" is also to be understood in the interest of the general public which includes a section of the public, say even the employees of the sick industrial company.

10.4. The SIC Act is, therefore, basically and predominantly remedial and ameliorative insofar as it empowers the quasi-judicial bodies, namely the BIFR and AAIFR, to determine the sick industry and to take appropriate measures for revival and rehabilitation of the same expeditiously. Thus the BIFR and AAIFR are assigned a more active role to evolve a sanctioned scheme for the revival and rehabilitation of the Sick Industrial Company. During such process,Section 22 of the SIC Act provides a genuine protection to the sick units from any legal proceedings for recovery of money and for enforcement of any security against the sick industrial company or of any guarantee in respect of the loan or advance granted to the sick industrial company, except with the consent of the BIFR or as the case may be, the AAIFR. Equally, there is also a bar to alienate the assets of a sick unit except with the consent of the BIFR as provided under Section 22A of the SIC Act.

10.5. While exercising the powers to sanction scheme under Section 1 9 of the Act for a sick unit or granting consent for the disposal of the assets of the sick unit under Section 22A of the Act, a statutory duty is cast on the BIFR/AAIFR, as the case may be, to achieve the objects of the SIC Act, referred to above. Sections 19 and 22A of the SIC Act even though are overlapping and inter-related, they are exclusive and independent. The power, much less the discretionary power conferred on the BIFR under Section 19 and 22A of the SIC Act, coupled with the duty cast on them thereunder, are therefore, nothing but warp and weft of the cloth, but for the one, the other would be of no useful purpose.

10.6. In the instant case, concededly, the impugned revised draft

rehabilitation scheme forwarded by the petitioner Company on 14.2.2003 , after due deliberation and discussion by all the interested parties who have participated in the joint meeting on 20.2.2003, was ultimately recommended by the Operating Agency (IDBI) for the approval of the BIFR, after satisfying that the scheme provides for revival and rehabilitation of the petitioner sick unit; and for the settlement of dues to the secured creditors, namely the financial institutions and the banks, as well as to the workers, out of the money brought in by the Promoters and co-promoters from the sale proceeds of 1260 grounds of land at Perambur, Chennai.

10.7. It is also not in dispute that the Asset Sale Committee in its meeting held on 26.6.2002 considered a sum of Rs.77 Crores as reasonable, as against the sum of Rs.75 crores offered by CREL for the sale of 1260 grounds of land. However, the said proposal could not fructify as the sale price of Rs.75 crores was proposed to be settled in 1 8 months from the date of sanction of scheme by the BIFR; while the secured creditors, namely financial institutions and Banks insisted for one time settlement within thirty days from the date of the sanction, as they were willing to give huge concessions to the petitioner sick unit in terms of the waiver of interest. As a result, the BIFR by proceedings dated 1.7.2002 recommended for the winding up of the company and also disbanded the Asset Sale Committee and restrained the company from in any manner selling the property, but at the same time gave an option to submit a viable rehabilitation scheme within thirty days from 1.7.2002. Hence, the petitioner gave a revised scheme, and the BIFR by proceedings dated 28.10.2002 directed the petitioner company/ Promoter/Co-promoter to transfer/deposit Rs.20 Crores within 2 or 3 days and also permitted the secured creditors, namely financial institutions and banks to take a final view including on the valuation and transfer price of the assets/ property, and directed the petitioner company to allow the bankers and other secured creditors to inspect the properties/records for satisfying themselves as to the assets sold/amounts received, etc., and further directed the Operating Agency, IDBI to submit its clear report within thirty days from 28.10.2002

10.8. A careful and closer reading of the proceedings dated 1.7.2002 and 28.10.2002 together, makes it clear that the Asset Sale Committee which was disbanded on 1.7.2002, was not reconstituted by the BIFR while passing the proceedings dated 28.10.2002, while directing the the secured creditors, namely financial institutions and banks to take a final view including on the valuation and transfer price of the assets/ property, and directed the petitioner company to allow the bankers and other secured creditors to inspect the properties/ records for satisfying themselves as to the assets sold/ amounts received, etc., and further directed the Operating Agency, IDBI to submit its clear report within thirty days from 28.10.2002. Therefore, the secured creditors, viz., financial institutions and banks, along with the promoters were allowed to find out a buyer for the assets of the petitioner company, without constituting the Asset Sale Committee.

10.9. It is only under such circumstances, the offer made by Shri Reddy and others for purchase of 1260 grounds at the cost of Rs.60 Crores riped for consideration of the secured creditors and bankers fruitfully, as the proposed purchaser was willing to pay the entire sale price of Rs.60

crores within 15 days from the date of sanction of the scheme by the BIFR, which would immediately meet the demands of the petitioner company to discharge its liabilities of the financial institutions, banks, as well as the workers in one time settlement, as the Promoters and Co-promoters are also willing to contribute their respective share of Rs.7.55 Crores and Rs.34 Crores, in addition to the sum of Rs.20 Crores, lying with the Operating Agency in a 'No lien account' and other deposits.

10.10. In spite of acceptance of the impugned scheme by the Secured creditors and workers, the BIFR by order dated 24.2.2003 refused to accord sanction for the impugned scheme holding that the proposal for sale of 1260 grounds of land was not transparent as the sale price was lower than Rs.75 crores which was originally offered by CREL, and the impugned offer has not come through the Asset Sale Committee. In this regard, it is relevant to mention that constitution of Asset Sale Committee is not mandatory, as the same is nowhere contemplated under the SIC Act. It is only a procedure evolved by the BIFR, themselves, of course to satisfy that the transaction with respect to the sale of the assets of the sick unit is fair and reasonable. While rejecting the scheme dated 14.2.2003, the BIFR also constituted the Asset Sale Committee, consisting of the Operating Agency (IDBI), State Bank of India, Indian Bank (Lead Bank) and the petitioner company. Besides, the BIFR required the Asset Sale Committee to advertise the sale of 1260 grounds of land at Perambur and also gave an option to the petitioner company to locate the buyer and finalise the deal through the Asset Sale Committee, and the petitioner company/promoter would be free to locate the buyers and finalise the deal through mutal negotiation, if no bids are received in response to the advertisement or the bids received are not acceptable to the Asset Sale Committee. It is not in dispute that the constituent members of the Asset Sale Committee had already given their consent for the sale of 1260 grounds of land at Perambur for Rs.60 Crores. This aspect of the case was not either weighed or considered by the authorities, viz., the BIFR as well as the AAIFR. The failure of appreciation of the above aspect of the case and non application of the mind by the authorities, requires the interference of this Court in the impugned proceedings of the BIFR and the AAIFR.

10.11. The AAIFR in its order dated 9.5.2003 while confirming the order of the BIFR dated 24.2.2003 held that the assets of the petitioner company should be sold only by way of public auction through advertisement, referring to the decisions of the Apex Court in Chairman and Managing Director, SIPCOT, Madras-8, and Ors. Vs. Contromix Pvt. Ltd., rep. by its Director (Finance) Seetharaman, Madras and another, reported in JT 1995 (6) SC 283 as followed in Haryana Financial Corporation & another Vs. Jagadamba Oil Mills and another reported in JT 2002 (1) SC 482, in order to procure the best price for the sale of public property, the property should be brought on public auction. The reliance place on the said decisions is not tenable in law as the assets proposed to be sold by the petitioner company are not public properties.

10.12. In any event, when the transparency sought for by the authorities among the Operating Agency (IDBI), Secured creditors, namely the

financial institutions, the banks and the petitioner company are duly satisfied, I fail to understand the reason for rejecting the sale of 1260 grounds of land to the 87th respondent, who is willing to deposit the entire sale price with the Operating Agency (IDBI) within 15 days from the date of sanction of scheme.

10.13. Be that be, while admitting the above writ petition, this Court, by order dated 13.5.2003 in W.P.M.P.Nos.18599 and 18600 of 2003 directed the Operating Agency to advertise the sale of 1260 grounds of land at Perambur belonging to the petitioner company and to report the same to the Court. Pursuant to the said advertisement made in the Economic Times Newspaper dated 23.5.2003, only one bid was offered for Rs.62.10 crores, again by the same Sri Reddy & others, the 87th respondent. Therefore, I do not find any good and sufficient reason to reject the said offer of Rs.62.10 Crores for want of transparency.

10.14. All the more, it is pertinent to note that the secured creditors, viz., financial institutions and banks, as well as the workers have all agreed for the sale of 1260 grounds of the land envisaged under the impugned scheme, as their dues will be settled immediately, as 'one time settlement', which in fact would revive, rehabilitate and ameliorate the sickness of the petitioner company.

10.15. Moreover, as referred to above, the impugned revised draft rehabilitation scheme dated 14.2.2003 also provides for substantial sources of funds not only for discharging the outstanding liabilities to the financial institutions, Banks, and settling the dues to the workers, but also brings in surplus funds to shift the impugned sick unit, viz., textile mill and to establish a new unit as a measure of rehabilitation.

10.16. In any event, as observed by the Apex Court i U.P.STATE SUGAR CORPN. LTD. Vs. U.P.S.S.CORPN. KARAMCHARI ASSOCIATION, referred supra, prior consent contemplated under Section 22A of the SIC Act should not be construed as a power to prohibit the sale of assets itself as it would run counter to the express terms under Section 22A of the SIC Act.

10.17. Of course, the matter of revival and rehabilitation of the petitioner company is pending consideration for nearly about 10 years. Time and again for some reason or the other, the schemes offered by petitioner company could not get the sanction of the BIFR for want of due diligence on the part of the promoters and co-promoters. Therefore, as a condition precedent, the promoters and co-promoters are required to deposit their respective contributions with the Operating Agency (IDBI) before offering sanction of the impugned scheme and giving consent for the disposal of the 1260 grounds of land at Perambur, Chennai that belongs to the petitioner company.

10.18. For all these reasons, I am inclined to set aside the impugned order dated 24.2.2003 of the BIFR as well as the order dated 9.5.2 003 of the AAIFR, with the following directions:

(i) The promoter and the co-promoter (46th respondent) shall deposit a sum of Rs.7.55 Crores and Rs.34 Crores, respectively, in an interest bearing 'No Lien Account' with the Operating Agency (IDBI), within 10 days from today (or) on or before 3.10.2003, whichever is earlier;

(ii) The petitioner company, its subsidiary company BREAD, and the proposed purchaser (87th respondent), shall complete all necessary formalities such as transfer of shares, passing of necessary resolutions, getting clearance from the secured creditors, viz., financial institutions and Banks to whom 1260 grounds of land at Perambur, Chennai that belongs to the petitioner company, proposed to be sold are furnished as security, for transferring the said property to the proposed purchaser (87th respondent), free of all encumbrances within ten days from today (or) on or before 3.10.2003, whichever is earlier;

(iii) the proposed purchaser (87th respondent) shall deposit the entire balance sale price of Rs.56.10 Crores (Rs.62.10 Crores - Rs.6 Crores already paid), for the sale of 1260 grounds of land at Perambur, Chennai, in an interest bearing 'No lien account', with the Operating Agency (IDBI) within ten days from 3.10.2003 (or) on or before 13.10 .2003, whichever is earlier;

(iv) the Operating Agency (IDBI) shall move the BIFR for the sanction of the impugned scheme which also provides for the sale of 1260 grounds of land at Perambur, Chennai that belongs to the petitioner company, and the BIFR shall pass appropriate orders sanctioning the impugned scheme and giving consent for the sale of the said 1260 grounds of land at Perambur, Chennai that belongs to the petitioner company, within ten days from 13.10.2003 (or) on or before 23.10.2003, whichever is earlier. Since all necessary parties have expressed their no objection to the impugned scheme before this Court, no further hearing before BIFR is required in this regard;

(v) the Operating Agency (IDBI) shall transfer the said 1260 grounds of land at Perambur, Chennai that belongs to the petitioner company to the proposed purchaser (87th respondent) free from all encumbrances within ten days from the date of sanction of the scheme (or) on or before 2.11.2003, whichever is earlier;

(vi) the Operating Agency (IDBI) shall disburse the dues to the Secured Creditors, namely Financial Institutions, Banks and debenture holders as well as to the workers, after getting vacant possession of the quarters from the workers who are in occupation of the quarters and handing over the same to the petitioner company simultaneously, within ten days from the date of sanction of the scheme (or) on or before 2.11.2003 whichever is earlier;

(vii) The petitioner company shall submit a techno-economic vilable scheme for the Binny Engineering Limited through the Operating Agency and the Operating Agency shall after due scrutiny, forward the same to the BIFR for necessary approval within thirty days from the date of sanction of the impugned scheme;

(viii) the promoter, in order to show his bonafide to rehabilitate the petitioner's sick unit, shall also make a further deposit of Rs.1.5 Crores in

addition to the sum of Rs.7.55 Crores, referred to in direction (i) above, within fifteen days from today (or) on or before 8.1 0.2003, whichever is earlier, with the Operating Agency (IDBI) in an interest bearing 'No lien Account', out of which Rs.50 Lakhs shall be kept as deposit in the interest bearing 'No lien account' with the Operating Agency (IDBI) till all the claims of the workers in all the pending cases, referred to above, are disposed of, however, the workers shall not have any right on the said deposit of Rs.50 Lakhs automatically towards their respective claim, as the said deposit amount of Rs.50 Lakhs shall be disbursed by the Operating Agency (IDBI) subject to the decisions in those cases and thereafter be utilized for the future rehabilitation of the petitioner's sick unit; and the promoters are at liberty to utilize the remaining amount of Rs.One Crore for shifting the petitioner's sick unit (textile mill) at Kancheepuram District and establishing a new textile mill as provided hereunder.

(ix) the promoter shall shift the impugned sick unit (textile mill) and establish a new textile mill over an extent of not less than 50 acres in Kancheepuram District within a period of 18 months from today, as per the following schedule:
a) the promoter shall complete the purchase of land of not less than 50 acres within a period of three months from today;
b) the promoter shall get necessary license, approval and sanction from all the statutory authorities; obtain electricity service connection; complete the construction of the new mill, installation of machinery, recruitment of employees, etc. within one year thereafter; and
c) the promoter shall commence the operation of the mill and start the production in full-fledge manner within an outer limit of eighteen months from today; and

(x) the BIFR shall oversee the implementation of all the above directions directly as well as by appointing the Operating Agency (IDBI) as the Monitoring Agency to monitor the progress of the above scheme periodically.

With the above direction, this writ petition is allowed. No costs. Consequently, all connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

sasi/kpl/atr

To:

1. The Appellate Authority for Industrial
and Financial Reconstruction
10th Floor, "Jeevan Prakash"
25, Kasturbai Gandhi Marg
New Delhi-110 001.

2. The Board of Industrial and Financial
Reconstruction, Sawanar Vyapar Bhawan
1, Tolstoy Marg, New Delhi.
3. The Joint Secretary
Industries & Commerce Department
Government of Andhra Pradesh
Hyderabad.

4. The Joint Secretary
Commerce & Industries Department
Sachivalaya, Bangalore.

5. The Additional Secretary
Department of Industries
Government of Tamil Nadu
Chennai.

6. The Secretary,
Ministry of Textiles
Udyog Bhawan
New Delhi.

7. The Secretary
Ministry of Commerce
Udyog Bhawan
New Delhi.

8. The Secretary
Department of Banking
Ministry of Finance
Jeevan Deep, Parliament Street
New Delhi.

9. The General Manager
ESIC, ESIC Buildings
Kotla Road,
Behind Foreign Post Office
New Delhi.

10.The Secretary
Tamil Nadu Electricity board
Chennai.

11.The Secretary
Ministry of Labour
Shram Shakti Bhawan
New Delhi.

12.The Secretary
Ministry of Railways
Rail Bhawan, New Delhi.

13.The Secretary
Ministry of Law, Justice & Co. Affairs
Department of Company Affairs
Shastri Bhawan.

14.The Secretary
Department of Revenue
Government of Tamil Nadu
Chennai.

15.Central Board of Excise & Customs
North Block,
New Delhi.

16.Directorate of Income Tax (Recovery)
Mayur Bhawan
Behind Super Bazar
Connaught Place, New Delhi.

17.Central Board of Direct Taxes
North Block, New Delhi.

18.The Deputy Registrar
Cooperative Department
Chennai-20.

19.Employees Provident Fund Organisation
Sub-Accounts Office
No.3, Rajaji Salai
Tambaram, Chennai-45.